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SHIPBUILDING TRADE AGREEMENT ACT

R E P O R T

OF THE

COMMITTEE ON NATIONAL SECURITY HOUSE OF REPRESENTATIVES

ON

H.R. 2754

together with

DISSENTING VIEWS

[Including cost estimate of the Congressional Budget Office]



MAY 30, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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SHIPBUILDING TRADE AGREEMENT ACT

MAY 30, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SPENCE, from the Committee on National Security,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2754]

[Including cost estimate of the Congressional Budget Office]

The Committee on National Security, to whom was referred the bill (H.R. 2754) to approve and implement the OECD Shipbuilding Trade Agreement, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shipbuilding Trade Agreement Act”.

SEC. 2. APPROVAL OF THE SHIPBUILDING AGREEMENT.

The Congress approves The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (hereafter in this Act referred to as the “Shipbuilding Agreement”), a reciprocal trade agreement which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

SEC. 3. EFFECTIVE DATE.

Except as provided in section 205, this Act and the amendments made by this Act take effect on the date that the Shipbuilding Agreement enters into force with respect to the United States.

TITLE I—INJURIOUS PRICING AND COUNTERMEASURES

SEC. 101. INJURIOUS PRICING AND COUNTERMEASURES PROCEEDINGS.

The Tariff Act of 1930 is amended by adding at the end the following new title:

“TITLE VIII—INJURIOUS PRICING AND COUN- TERMEASURES RELATING TO SHIPBUILDING

“Subtitle A—Injurious Pricing Charge and Countermeasures

- “Sec. 801. Injurious pricing charge.
- “Sec. 802. Procedures for initiating an injurious pricing investigation.
- “Sec. 803. Preliminary determinations.
- “Sec. 804. Termination or suspension of investigation.
- “Sec. 805. Final determinations.
- “Sec. 806. Imposition and collection of injurious pricing charge.
- “Sec. 807. Imposition of countermeasures.
- “Sec. 808. Injurious pricing petitions by third countries.
- “Sec. 809. Third Country Sales.

“Subtitle B—Special Rules

- “Sec. 821. Export price.
- “Sec. 822. Normal value.
- “Sec. 823. Currency conversion.

“Subtitle C—Procedures

- “Sec. 841. Hearings.
- “Sec. 842. Determinations on the basis of the facts available.
- “Sec. 843. Access to information.
- “Sec. 844. Conduct of investigations.
- “Sec. 845. Administrative action following shipbuilding agreement panel reports.

“Subtitle D—Definitions

- “Sec. 861. Definitions.

“Subtitle A—Injurious Pricing Charge and Countermeasures

“SEC. 801. INJURIOUS PRICING CHARGE.

“(a) BASIS FOR CHARGE.—If—

“(1) the administering authority determines that a foreign vessel has been sold directly or indirectly to one or more United States buyers at less than its fair value, and

“(2) the Commission determines that—

“(A) an industry in the United States—

“(i) is or has been materially injured, or

“(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of such vessel, then there shall be imposed upon the foreign producer of the subject vessel an injurious pricing charge, in an amount equal to the amount by which the normal value exceeds the export price for the vessel. For purposes of this subsection and section 805(b)(1), a reference to the sale of a foreign vessel includes the creation or transfer of an ownership interest in the vessel, except for an ownership interest created or acquired solely for the purpose of providing security for a normal commercial loan.

“(b) FOREIGN VESSELS NOT MERCHANDISE.—No foreign vessel may be considered to be, or to be part of, a class or kind of merchandise for purposes of subtitle B of title VII.

“SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS PRICING INVESTIGATION.

“(a) INITIATION BY ADMINISTERING AUTHORITY.—

“(1) GENERAL RULE.—Except in the case in which subsection (d)(6) applies, an injurious pricing investigation shall be initiated whenever the administering au-

thority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a charge under section 801(a) exist, and whether a producer described in section 861(17)(C) would meet the criteria of subsection (b)(1)(B) for a petitioner.

“(2) TIME FOR INITIATION BY ADMINISTERING AUTHORITY.—An investigation may only be initiated under paragraph (1) within 6 months after the time the administering authority first knew or should have known of the sale of the vessel. Any period in which subsection (d)(6)(A) applies shall not be included in calculating that 6-month period.

“(b) INITIATION BY PETITION.—

“(1) PETITION REQUIREMENTS.—(A) Except in a case in which subsection (d)(6) applies, an injurious pricing proceeding shall be initiated whenever an interested party, as defined in subparagraph (C), (D), (E), or (F) of section 861(17), files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subparagraph (B), (C), (D), or (E) of this paragraph, and which is accompanied by information reasonably available to the petitioner supporting those allegations and identifying the transaction concerned.

“(B)(i) If the petitioner is a producer described in section 861(17)(C), and—

“(I) if the petitioner was invited to tender a bid on the contract at issue, the petition shall include information indicating that the petitioner actually did so and the bid of the petitioner substantially met the delivery date and technical requirements of the bid, or

“(II) if the petitioner was not invited to tender a bid, the petition shall include information indicating that the petitioner was capable of building the vessel concerned and, if the petitioner knew or should have known of the proposed purchase, it made demonstrable efforts to conclude a sale with the United States buyer consistent with the delivery date and technical requirements of the buyer.

“(ii) For purposes of clause (i)(II), there is a rebuttable presumption that the petitioner knew or should have known of the proposed purchase if it is demonstrated that—

“(I) the majority of the producers in the industry have made efforts with the United States buyer to conclude a sale of the subject vessel, or

“(II) general information on the sale was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the petitioner had regular contacts or dealings.

“(C) If the petitioner is an interested party described in section 861(17)(D), the petition shall include information indicating that members of the union or group of workers described in that section are employed by a producer that meets the requirements of subparagraph (B) of this paragraph.

“(D) If the petitioner is an interested party described in section 861(17)(E), the petition shall include information indicating that a member of the association described in that section is a producer that meets the requirements of subparagraph (B) of this paragraph.

“(E) If the petitioner is an interested party described in section 861(17)(F), the petition shall include information indicating that a member of the association described in that section meets the requirements of subparagraph (C) or (D) of this paragraph.

“(F) The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

“(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

“(3) DEADLINE FOR FILING PETITION.—

“(A) DEADLINE.—(i) A petitioner to which paragraph (1)(B)(i)(I) applies shall file the petition no later than the earlier of—

“(I) 6 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or

“(II) 6 months after delivery of the subject vessel.

“(ii) A petitioner to which paragraph (1)(B)(i)(II) applies shall—

“(I) file the petition no later than the earlier of 9 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or 6 months after delivery of the subject vessel, and

“(II) submit to the administering authority a notice of intent to file a petition no later than 6 months after the time that the petitioner first knew or should have known of the sale (unless the petition itself is filed within that 6-month period).

“(B) PRESUMPTION OF KNOWLEDGE.—For purposes of this paragraph, if the existence of the sale, together with general information concerning the vessel, is published in the international trade press, there is a rebuttable presumption that the petitioner knew or should have known of the sale of the vessel from the date of that publication.

“(c) ACTIONS BEFORE INITIATING INVESTIGATIONS.—

“(1) NOTIFICATION OF GOVERNMENTS.—Before initiating an investigation under either subsection (a) or (b), the administering authority shall notify the government of the exporting country of the investigation. In the case of the initiation of an investigation under subsection (b), such notification shall include a public version of the petition.

“(2) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 861(17)(C), (D), (E), or (F) before the administering authority makes its decision whether to initiate an investigation pursuant to a petition, except for inquiries regarding the status of the administering authority’s consideration of the petition or a request for consultation by the government of the exporting country.

“(3) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under subsection (b)(1).

“(d) PETITION DETERMINATION.—

“(1) TIME FOR INITIAL DETERMINATION.—(A) Within 45 days after the date on which a petition is filed under subsection (b), the administering authority shall, after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition—

“(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegations; and

“(ii) determine if the petition has been filed by or on behalf of the industry.

“(B) Any period in which paragraph (6)(A) applies shall not be included in calculating the 45-day period described in subparagraph (A).

“(2) AFFIRMATIVE DETERMINATIONS.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the vessel was sold at less than fair value, unless paragraph (6) applies.

“(3) NEGATIVE DETERMINATIONS.—If—

“(A) the determination under clause (i) or (ii) of paragraph (1)(A) is negative, or

“(B) paragraph (6)(B) applies,

the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

“(4) DETERMINATION OF INDUSTRY SUPPORT.—

“(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the domestic industry, if—

“(i) the domestic producers or workers who support the petition collectively account for at least 25 percent of the total capacity of domestic producers capable of producing a like vessel, and

“(ii) the domestic producers or workers who support the petition collectively account for more than 50 percent of the total capacity to produce a like vessel of that portion of the domestic industry expressing support for or opposition to the petition.

“(B) CERTAIN POSITIONS DISREGARDED.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to the foreign producer or United States buyer of the subject vessel, or the domestic producer is itself the United States buyer, unless such domestic producers demonstrate that their interests as domestic pro-

ducers would be adversely affected by the imposition of an injurious pricing charge.

“(C) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total capacity to produce a like vessel—

“(i) the administering authority shall poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

“(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

“(D) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 861(17) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

“(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—For purposes of this subsection, the term ‘domestic producers or workers’ means interested parties as defined in section 861(17)(C), (D), (E), or (F).

“(6) PROCEEDINGS BY WTO MEMBERS.—The administering authority shall not initiate an investigation under this section if, with respect to the vessel sale at issue, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party—

“(A) has been initiated and has been pending for not more than one year, or

“(B) has been completed and resulted in the imposition of antidumping measures or a negative determination with respect to whether the sale was at less than fair value or with respect to injury.

“(e) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

“(1) notify the Commission immediately of any determination it makes under subsection (a) or (d), and

“(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

“SEC. 803. PRELIMINARY DETERMINATIONS.

“(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

“(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 802(d)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

“(A) an industry in the United States—

“(i) is or has been materially injured, or

“(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

“(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1) within 90 days after the date on which the petition is filed or, in the case of an investigation initiated under section 802(a), within 90 days after the date on which the Commission receives notice from the administering authority that the investigation has been initiated.

“(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

“(1) PERIOD OF INJURIOUS PRICING INVESTIGATION.—(A) The administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the subject vessel was sold at less than fair value.

“(B) If cost data is required to determine normal value on the basis of a sale of a foreign like vessel that has not been delivered on or before the date on which the administering authority initiates the investigation, the administering

authority shall make its determination within 160 days after the date of delivery of the foreign like vessel.

“(C) If normal value is to be determined on the basis of constructed value, the administering authority shall make its determination within 160 days after the date of delivery of the subject vessel.

“(D) In cases in which subparagraph (B) or (C) does not apply, the administering authority shall make its determination within 160 days after the date on which the administering authority initiates the investigation under section 802.

“(E) In no event shall the administering authority make its determination before an affirmative determination is made by the Commission under subsection (a).

“(2) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis. For purposes of the preceding sentence, an injurious pricing margin is de minimis if the administering authority determines that the margin is less than 2 percent of the export price.

“(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES OR FOR GOOD CAUSE.—

“(1) IN GENERAL.—If—

“(A) the administering authority concludes that the parties concerned are cooperating and determines that—

“(i) the case is extraordinarily complicated by reason of—

“(I) the novelty of the issues presented, or

“(II) the nature and extent of the information required, and

“(ii) additional time is necessary to make the preliminary determination, or

“(B) a party to the investigation requests an extension and demonstrates good cause for the extension, then the administering authority may postpone the time for making its preliminary determination.

“(2) LENGTH OF POSTPONEMENT.—The preliminary determination may be postponed under paragraph (1)(A) or (B) until not later than the 190th day after—

“(A) the date of delivery of the foreign like vessel, if subsection (b)(1)(B) applies,

“(B) the date of delivery of the subject vessel, if subsection (b)(1)(C) applies, or

“(C) the date on which the administering authority initiates an investigation under section 802, in a case in which subsection (b)(1)(D) applies.

“(3) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

“(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority shall—

“(1) determine an estimated injurious pricing margin, and

“(2) make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

“(e) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

“SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.

“(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner.

“(2) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 803(b).

“(b) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 802(a) after providing notice of such termination to all parties to the investigation.

“(c) ALTERNATE EQUIVALENT REMEDY.—The criteria set forth in subparagraphs (A) through (D) of section 806(e)(1) shall apply to any agreement that forms the basis for termination of an investigation under subsection (a) or (b).

“(d) PROCEEDINGS BY WTO MEMBERS.—

“(1) SUSPENSION OF INVESTIGATION.—The administering authority and the Commission shall suspend an investigation under this section if a WTO member that is not a Shipbuilding Agreement Party initiates an antidumping proceeding described in section 861(29)(A) with respect to the sale of the subject vessel.

“(2) TERMINATION OF INVESTIGATION.—If an antidumping proceeding described in paragraph (1) is concluded by—

“(A) the imposition of antidumping measures, or

“(B) a negative determination with respect to whether the sale is at less than fair value or with respect to injury, the administering authority and the Commission shall terminate the investigation under this section.

“(3) CONTINUATION OF INVESTIGATION.—(A) If such a proceeding—

“(i) is concluded by a result other than a result described in paragraph (2), or

“(ii) is not concluded within one year from the date of the initiation of the proceeding,

then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

“(B) Notwithstanding subparagraph (A)(ii), if the proceeding is concluded by a result described in paragraph (2)(A), the administering authority and the Commission shall terminate the investigation under this section.

“SEC. 805. FINAL DETERMINATIONS.

“(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—

“(1) IN GENERAL.—Within 75 days after the date of its preliminary determination under section 803(b), the administering authority shall make a final determination of whether the vessel which is the subject of the investigation has been sold in the United States at less than its fair value.

“(2) EXTENSION OF PERIOD FOR DETERMINATION.—(A) The administering authority may postpone making the final determination under paragraph (1) until not later than 290 days after—

“(i) the date of delivery of the foreign like vessel, in an investigation to which section 803(b)(1)(B) applies,

“(ii) the date of delivery of the subject vessel, in an investigation to which section 803(b)(1)(C) applies, or

“(iii) the date on which the administering authority initiates the investigation under section 802, in an investigation to which section 803(b)(1)(D) applies.

“(B) The administering authority may apply subparagraph (A) if a request in writing is made by—

“(i) the producer of the subject vessel, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was affirmative, or

“(ii) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was negative.

“(3) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis as defined in section 803(b)(2).

“(b) FINAL DETERMINATION BY COMMISSION.—

“(1) IN GENERAL.—The Commission shall make a final determination of whether—

“(A) an industry in the United States—

 “(i) is or has been materially injured, or

 “(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of the vessel with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

“(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

 “(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 803(b), or

 “(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

“(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

“(c) EFFECT OF FINAL DETERMINATIONS.—

 “(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then the administering authority shall—

 “(A) make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

 “(B) calculate an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel.

 “(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an injurious pricing order under section 806. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination.

“(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

“(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term ‘ministerial error’ includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

“SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS PRICING CHARGE.

 “(a) IN GENERAL.—Within 10 days after being notified by the Commission of an affirmative determination under section 805(b), the administering authority shall publish an order imposing an injurious pricing charge on the foreign producer of the subject vessel which—

 “(1) directs the foreign producer of the subject vessel to pay to the Secretary of the Treasury, or the designee of the Secretary, within 180 days from the date of publication of the order, an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel,

“(2) includes the identity and location of the foreign producer and a description of the subject vessel, in such detail as the administering authority deems necessary, and

“(3) informs the foreign producer that—

“(A) failure to pay the injurious pricing charge in a timely fashion may result in the imposition of countermeasures with respect to that producer under section 807,

“(B) payment made after the deadline described in paragraph (1) shall be subject to interest charges at the Commercial Interest Reference Rate (CIRR), and

“(C) the foreign producer may request an extension of the due date for payment under subsection (b).

“(b) EXTENSION OF DUE DATE FOR PAYMENT IN EXTRAORDINARY CIRCUMSTANCES.—

“(1) EXTENSION.—Upon request, the administering authority may amend the order under subsection (a) to set a due date for payment or payments later than the date that is 180 days from the date of publication of the order, if the administering authority determines that full payment in 180 days would render the producer insolvent or would be incompatible with a judicially supervised reorganization. When an extended payment schedule provides for a series of partial payments, the administering authority shall specify the circumstances under which default on one or more payments will result in the imposition of countermeasures.

“(2) INTEREST CHARGES.—If a request is granted under paragraph (1), payments made after the date that is 180 days from the publication of the order shall be subject to interest charges at the CIRR.

“(c) NOTIFICATION OF ORDER.—The administering authority shall deliver a copy of the order requesting payment to the foreign producer of the subject vessel and to an appropriate representative of the government of the exporting country.

“(d) REVOCATION OF ORDER.—The administering authority—

“(1) may revoke an injurious pricing order if the administering authority determines that producers accounting for substantially all of the capacity to produce a domestic like vessel have expressed a lack of interest in the order, and

“(2) shall revoke an injurious pricing order—

“(A) if the sale of the vessel that was the subject of the injurious pricing determination is voided,

“(B) if the injurious pricing charge is paid in full, including any interest accrued for late payment,

“(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or

“(D) if, with respect to the vessel sale that was at issue in the investigation that resulted in the injurious pricing order, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party has been completed and resulted in the imposition of antidumping measures.

“(e) ALTERNATIVE EQUIVALENT REMEDY.—

“(1) AGREEMENT FOR ALTERNATE REMEDY.—The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—

“(A) is at least as effective a remedy as the injurious pricing charge,

“(B) is in the public interest,

“(C) can be effectively monitored and enforced, and

“(D) is otherwise consistent with the domestic law and international obligations of the United States.

“(2) PRIOR CONSULTATIONS AND SUBMISSION OF COMMENTS.—Before entering into an agreement under paragraph (1), the administering authority shall consult with the industry, and provide for the submission of comments by interested parties, with respect to the agreement.

“(3) MATERIAL VIOLATIONS OF AGREEMENT.—If the injurious pricing order has been suspended under paragraph (1), and the administering authority determines that the foreign producer concerned has materially violated the terms of the agreement under paragraph (1), the administering authority shall terminate the suspension.

“SEC. 807. IMPOSITION OF COUNTERMEASURES.

“(a) GENERAL RULE.—

“(1) ISSUANCE OF ORDER IMPOSING COUNTERMEASURES.—Unless an injurious pricing order is revoked or suspended under section 806 (d) or (e), the administering authority shall issue an order imposing countermeasures.

“(2) CONTENTS OF ORDER.—The countermeasure order shall—

“(A) state that, as provided in section 468, a permit to lade or unlade passengers or merchandise may not be issued with respect to vessels contracted to be built by the foreign producer of the vessel with respect to which an injurious pricing order was issued under section 806, and

“(B) specify the scope and duration of the prohibition on the issuance of a permit to lade or unlade passengers or merchandise.

“(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

“(1) GENERAL RULE.—The administering authority shall issue a notice of intent to impose countermeasures not later than 30 days before the expiration of the time for payment specified in the injurious pricing order (or extended payment provided for under section 806(b)), and shall publish the notice in the Federal Register within 7 days after issuing the notice.

“(2) ELEMENTS OF THE NOTICE OF INTENT.—The notice of intent shall contain at least the following elements:

“(A) SCOPE.—A permit to lade or unlade passengers or merchandise may not be issued with respect to any vessel—

“(i) built by the foreign producer subject to the proposed countermeasures, and

“(ii) with respect to which the material terms of sale are established within a period of 4 consecutive years beginning on the date that is 30 days after publication in the Federal Register of the notice of intent described in paragraph (1).

“(B) DURATION.—For each vessel described in subparagraph (A), a permit to lade or unlade passengers or merchandise may not be issued for a period of 4 years after the date of delivery of the vessel.

“(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

“(1) GENERAL RULE.—The administering authority shall, within the time specified in paragraph (2), issue a determination and order imposing countermeasures.

“(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

“(3) CONTENT OF THE DETERMINATION.—In the determination imposing countermeasures, the administering authority shall determine whether, in light of all of the circumstances, an interested party has demonstrated that the scope or duration of the countermeasures described in subsection (b)(2) should be narrower or shorter than the scope or duration set forth in the notice of intent to impose countermeasures.

“(4) ORDER.—At the same time it issues its determination, the administering authority shall issue an order imposing countermeasures, consistent with its determination.

“(d) ADMINISTRATIVE REVIEW OF DETERMINATION TO IMPOSE COUNTERMEASURES.—

“(1) REQUEST FOR REVIEW.—Each year, in the anniversary month of the issuance of the order imposing countermeasures under subsection (c), the administering authority shall publish in the Federal Register a notice providing that interested parties may request—

“(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and

“(B) a hearing in connection with such a review.

“(2) REVIEW.—If a proper request has been received under paragraph (1), the administering authority shall—

“(A) publish notice of initiation of a review in the Federal Register not later than 15 days after the end of the anniversary month of the issuance of the order imposing countermeasures, and

“(B) review and determine whether the requesting party has demonstrated that the scope or duration of the countermeasures is excessive in light of all of the circumstances.

“(3) TIME FOR REVIEW.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of the review is published. If the determination under para-

graph (2)(B) is affirmative, the administering authority shall amend the order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service. In extraordinary circumstances, the administering authority may extend the time for its determination under paragraph (2)(B) to not later than 150 days after the date on which the notice of initiation of the review is published.

“(e) EXTENSION OF COUNTERMEASURES.—

“(1) REQUEST FOR EXTENSION.—Within the time described in paragraph (2), an interested party may file with the administering authority a request that the scope or duration of countermeasures be extended.

“(2) DEADLINE FOR REQUEST FOR EXTENSION.—

“(A) REQUEST FOR EXTENSION BEYOND 4 YEARS.—If the request seeks an extension that would cause the scope or duration of countermeasures to exceed 4 years, including any prior extensions, the request for extension under paragraph (1) shall be filed not earlier than the date that is 15 months, and not later than the date that is 12 months, before the date that marks the end of the period that specifies the vessels that fall within the scope of the order by virtue of the establishment of material terms of sale within that period.

“(B) OTHER REQUESTS.—If the request seeks an extension under paragraph (1) other than one described in subparagraph (A), the request shall be filed not earlier than the date that is 6 months, and not later than a date that is 3 months, before the date that marks the end of the period referred to in subparagraph (A).

“(3) DETERMINATION.—

“(A) NOTICE OF REQUEST FOR EXTENSION.—If a proper request has been received under paragraph (1), the administering authority shall publish notice of initiation of an extension proceeding in the Federal Register not later than 15 days after the applicable deadline in paragraph (2) for requesting the extension.

“(B) PROCEDURES.—

“(i) REQUESTS FOR EXTENSION BEYOND 4 YEARS.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

“(ii) OTHER REQUESTS.—If paragraph (2)(B) applies to the request, the administering authority shall determine, within 90 days after the date on which the notice of initiation of the proceeding is published, whether the requesting party has demonstrated that the scope or duration of the countermeasures is inadequate in light of all of the circumstances. If the administering authority determines that an extension is warranted, it shall amend the countermeasure order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service.

“(4) CONSULTATION WITH TRADE REPRESENTATIVE.—If paragraph (3)(B)(i) applies, the administering authority shall consult with the Trade Representative concerning whether it would be appropriate to request establishment of a dispute settlement panel under the Shipbuilding Agreement for the purpose of seeking authorization to extend the scope or duration of countermeasures for a period in excess of 4 years.

“(5) DECISION NOT TO REQUEST PANEL.—If, based on consultations under paragraph (4), the Trade Representative decides not to request establishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

“(6) PANEL PROCEEDINGS.—If, based on consultations under paragraph (4), the Trade Representative requests the establishment of a panel under the Shipbuilding Agreement to authorize an extension of the period of countermeasures, and the panel authorizes such an extension, the administering authority shall promptly amend the countermeasure order. The administering authority shall publish notice of the amendment in the Federal Register.

“(f) LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

“(1) GENERAL RULE.—At least once during each 12-month period beginning on the anniversary date of a determination to impose countermeasures under this section, the administering authority shall publish in the Federal Register a list of all delivered vessels subject to countermeasures under the determination.

“(2) CONTENT OF LIST.—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

- “(A) The name and general description of the vessel.
- “(B) The vessel identification number.
- “(C) The shipyard where the vessel was constructed.
- “(D) The last-known registry of the vessel.
- “(E) The name and address of the last-known owner of the vessel.
- “(F) The delivery date of the vessel.
- “(G) The remaining duration of countermeasures on the vessel.
- “(H) Any other identifying information available.

“(3) AMENDMENT OF LIST.—The administering authority may amend the list from time to time to reflect new information that comes to its attention and shall publish any amendments in the Federal Register.

“(4) SERVICE OF LIST AND AMENDMENTS.—(A) The administering authority shall serve a copy of the list described in paragraph (1) on—

- “(i) the petitioner under section 802(b),
- “(ii) the United States Customs Service,
- “(iii) the Secretariat of the Organization for Economic Cooperation and Development,
- “(iv) the owners of vessels on the list,
- “(v) the shipyards on the list, and
- “(vi) the government of the country in which a shipyard on the list is located.

“(B) The administering authority shall serve a copy of any amendments to the list under paragraph (3) or subsection (g)(3) on—

- “(i) the parties listed in clauses (i), (ii), and (iii) of subparagraph (A), and,
- “(ii) if the amendment affects their interests, the parties listed in clauses (iv), (v), and (vi) of subparagraph (A).

“(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

“(1) REQUEST FOR REVIEW.—(A) An interested party may request in writing a review of the list described in subsection (f)(1), including any amendments thereto, to determine whether—

- “(i) a vessel included in the list does not fall within the scope of the applicable countermeasure order and should be deleted, or
- “(ii) a vessel not included in the list falls within the scope of the applicable countermeasure order and should be added.

“(B) Any request seeking a determination described in subparagraph (A)(i) shall be made within 90 days after the date of publication of the applicable list.

“(2) REVIEW.—If a proper request for review has been received, the administering authority shall—

- “(A) publish notice of initiation of a review in the Federal Register—
 - “(i) not later than 15 days after the request is received, or
 - “(ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and
- “(B) review and determine whether the requesting party has demonstrated that—
 - “(i) a vessel included in the list does not qualify for such inclusion,

or

- “(ii) a vessel not included in the list qualifies for inclusion.

“(3) TIME FOR DETERMINATION.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.

“(h) EXPIRATION OF COUNTERMEASURES.—Upon expiration of a countermeasure order imposed under this section, the administering authority shall promptly publish a notice of the expiration in the Federal Register.

“(i) SUSPENSION OR TERMINATION OF PROCEEDINGS OR COUNTERMEASURES; TEMPORARY REDUCTION OF COUNTERMEASURES.—

“(1) IF INJURIOUS PRICING ORDER REVOKED OR SUSPENDED.—If an injurious pricing order has been revoked or suspended under section 806(d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

“(2) IF PAYMENT DATE AMENDED.—(A) Subject to subparagraph (C), if the payment date under an injurious pricing order is amended under section 845, the administering authority shall, as appropriate, suspend proceedings or modify deadlines under this section, or suspend or amend a countermeasure order issued with respect to that injurious pricing order.

“(B) In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not applied before the date that is 30 days after publication in the Federal Register of the amended payment date.

“(C) If—

“(i) a countermeasure order is issued under subsection (c) before an amendment is made under section 845 to the payment date of the injurious pricing order to which the countermeasure order applies, and

“(ii) the administering authority determines that the period of time between the original payment date and the amended payment date is significant for purposes of determining the appropriate scope or duration of countermeasures,

the administering authority may, in lieu of acting under subparagraph (A), reinstitute proceedings under subsection (c) for purposes of issuing a new determination under that subsection.

“(j) COMMENT AND HEARING.—In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—

“(1) shall solicit comments from interested parties, and

“(2)(A) in a proceeding under subsection (c) or (d), upon the request of an interested party, shall hold a hearing in accordance with section 841(b) in connection with that proceeding, or

“(B) in a proceeding under subsection (e) or (g), upon the request of an interested party, may hold a hearing in accordance with section 841(b) in connection with that proceeding.

“SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.

“(a) FILING OF PETITION.—The government of a Shipbuilding Agreement Party may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

“(1) a vessel from another Shipbuilding Agreement Party has been sold in the United States at less than fair value, and

“(2) an industry, in the petitioning country, producing or capable of producing a like vessel is materially injured by reason of such sale.

“(b) INITIATION.—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the Parties Group under the Shipbuilding Agreement, shall determine whether to initiate an investigation described in subsection (a).

“(c) DETERMINATIONS.—Upon initiation of an investigation under subsection (a), the Trade Representative shall request the following determinations be made in accordance with substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

“(1) The administering authority shall determine whether the subject vessel has been sold at less than fair value.

“(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of the sale of the subject vessel in the United States.

“(d) PUBLIC COMMENT.—An opportunity for public comment shall be provided, as appropriate—

“(1) by the Trade Representative, in making the determinations required by subsection (b), and

“(2) by the administering authority and the Commission, in making the determinations required by subsection (c).

“(e) ISSUANCE OF ORDER.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall—

“(1) order an injurious pricing charge in accordance with section 806, and

“(2) make such determinations and take such other actions as are required by sections 806 and 807, as if affirmative determinations had been made under subsections (a) and (b) of section 805.

“(f) REVIEWS OF DETERMINATIONS.—For purposes of review under section 516B, if an order is issued under subsection (e)—

“(1) the final determinations of the administering authority and the Commission under subsection (c) shall be treated as final determinations made under section 805, and

“(2) determinations of the administering authority under subsection (e)(2) shall be treated as determinations made under section 806 or 807, as the case may be.

“(g) ACCESS TO INFORMATION.—Section 843 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

“SEC. 809. THIRD COUNTRY SALES.

“(a) FILING OF PETITION.—Any interested party that would be eligible to file a petition under section 802(b)(1) with respect to a sale if such sale had been to a United States buyer may, with respect to a sale of a vessel by a foreign producer in a Shipbuilding Agreement Party to a buyer in a third country that is a Shipbuilding Agreement Party, file with the Trade Representative a petition alleging that—

“(1) such vessel has been sold at less than fair value; and

“(2) the industry in the United States producing or capable of producing a like vessel is materially injured by reason of such sale.

“(b) DETERMINATION.—Upon receipt of a petition under subsection (a), the Trade Representative shall request that the following determinations be made in accordance with substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

“(1) The administering authority shall determine whether there is reasonable cause to believe that the subject vessel has been sold at less than fair value.

“(2) The Commission shall determine whether there is reasonable cause to believe that the industry in the United States is materially injured by reason of such sale.

“(c) COMPLAINT BY TRADE REPRESENTATIVE.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (b), and the Commission makes an affirmative determination under paragraph (2) of subsection (b), the Trade Representative shall make application to the country of the buyer of the subject vessel for an injurious pricing action and relief similar to that available under section 808. The Trade Representative shall advise the petitioner of the proceedings undertaken by the third country in response to such application and shall permit the petitioner to participate in such proceedings to the greatest extent practicable.

“Subtitle B—Special Rules

“SEC. 821. EXPORT PRICE.

“(a) EXPORT PRICE.—For purposes of this title, the term ‘export price’ means the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated United States buyer. The term ‘sold (or agreed to be sold) by or for the account of the foreign producer’ includes any transfer of an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a United States buyer.

“(b) ADJUSTMENTS TO EXPORT PRICE.—The price used to establish export price shall be—

“(1) increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject vessel, and

“(2) reduced by—

“(A) the amount, if any, included in such price, attributable to any additional costs, charges, or expenses which are incident to bringing the subject vessel from the shipyard in the exporting country to the place of delivery,

“(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject vessel, and

“(C) all other expenses incidental to placing the vessel in condition for delivery to the buyer.

“SEC. 822. NORMAL VALUE.

“(a) DETERMINATION.—In determining under this title whether a subject vessel has been sold at less than fair value, a fair comparison shall be made between the

export price and normal value of the subject vessel. In order to achieve a fair comparison with the export price, normal value shall be determined as follows:

“(1) DETERMINATION OF NORMAL VALUE.—

“(A) IN GENERAL.—The normal value of the subject vessel shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price under section 821(a).

“(B) PRICE.—The price referred to in subparagraph (A) is—

“(i) the price at which a foreign like vessel is first sold in the exporting country, in the ordinary course of trade and, to the extent practicable, at the same level of trade, or

“(ii) in a case to which subparagraph (C) applies, the price at which a foreign like vessel is so sold for consumption in a country other than the exporting country or the United States, if—

“(I) such price is representative, and

“(II) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price.

“(C) THIRD COUNTRY SALES.—This subparagraph applies when—

“(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

“(ii) the particular market situation in the exporting country does not permit a proper comparison with the export price.

“(D) CONTEMPORANEOUS SALE.—For purposes of subparagraph (A), ‘a time reasonably corresponding to the time of the sale’ means within 3 months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as the administering authority determines would be appropriate.

“(2) FICTITIOUS MARKETS.—No pretended sale, and no sale intended to establish a fictitious market, shall be taken into account in determining normal value.

“(3) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject vessel cannot be determined under paragraph (1)(B) or (1)(C), then the normal value of the subject vessel shall be the constructed value of that vessel, as determined under subsection (e).

“(4) INDIRECT SALES.—If a foreign like vessel is sold through an affiliated party, the price at which the foreign like vessel is sold by such affiliated party may be used in determining normal value.

“(5) ADJUSTMENTS.—The price described in paragraph (1)(B) shall be—

“(A) reduced by—

“(i) the amount, if any, included in the price described in paragraph (1)(B), attributable to any costs, charges, and expenses incident to bringing the foreign like vessel from the shipyard to the place of delivery to the purchaser,

“(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

“(iii) the amount of all other expenses incidental to placing the foreign like vessel in condition for delivery to the buyer, and

“(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

“(i) physical differences between the subject vessel and the vessel used in determining normal value, or

“(ii) other differences in the circumstances of sale.

“(6) ADJUSTMENTS FOR LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price and normal value, if the difference in level of trade—

“(A) involves the performance of different selling activities, and

“(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

“(7) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (d) may be adjusted, as appropriate, pursuant to this subsection.

“(b) SALES AT LESS THAN COST OF PRODUCTION.—

“(1) DETERMINATION; SALES DISREGARDED.—Whenever the administering authority has reasonable grounds to believe or suspect that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the foreign like vessel, the administering authority shall determine whether, in fact, such sale was made at less than the cost of production. If the administering authority determines that the sale was made at less than the cost of production and was not at a price which permits recovery of all costs within 5 years, such sale may be disregarded in the determination of normal value. Whenever such a sale is disregarded, normal value shall be based on another sale of a foreign like vessel in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the subject vessel.

“(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection:

“(A) REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—There are reasonable grounds to believe or suspect that the sale of a foreign like vessel was made at a price that is less than the cost of production of the vessel, if an interested party described in subparagraph (C), (D), (E), or (F) of section 861(17) provides information, based upon observed prices or constructed prices or costs, that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the vessel.

“(B) RECOVERY OF COSTS.—If the price is below the cost of production at the time of sale but is above the weighted average cost of production for the period of investigation, such price shall be considered to provide for recovery of costs within 5 years.

“(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this section, the cost of production shall be an amount equal to the sum of—

“(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like vessel, during a period which would ordinarily permit the production of that vessel in the ordinary course of business, and

“(B) an amount for selling, general, and administrative expenses based on actual data pertaining to the production and sale of the foreign like vessel by the producer in question.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like vessel sold in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or on their disposition which are remitted or refunded upon exportation.

“(c) NONMARKET ECONOMY COUNTRIES.—

“(1) IN GENERAL.—If—

“(A) the subject vessel is produced in a nonmarket economy country, and

“(B) the administering authority finds that available information does not permit the normal value of the subject vessel to be determined under subsection (a),

the administering authority shall determine the normal value of the subject vessel on the basis of the value of the factors of production utilized in producing the vessel and to which shall be added an amount for general expenses and profit plus the cost of expenses incidental to placing the vessel in a condition for delivery to the buyer. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

“(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of the subject vessel under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which a vessel that is—

- “(A) comparable to the subject vessel, and
 - “(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,
- is sold in other countries, including the United States.
- “(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing the vessel include, but are not limited to—
- “(A) hours of labor required,
 - “(B) quantities of raw materials employed,
 - “(C) amounts of energy and other utilities consumed, and
 - “(D) representative capital cost, including depreciation.
- “(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—
- “(A) at a level of economic development comparable to that of the non-market economy country, and
 - “(B) significant producers of comparable vessels.
- “(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—
- “(1) the subject vessel was produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of a foreign like vessel which are located in another country or countries,
 - “(2) subsection (a)(1)(C) applies, and
 - “(3) the normal value of a foreign like vessel produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like vessel produced in the facilities located in the exporting country,
- the administering authority shall determine the normal value of the subject vessel by reference to the normal value at which a foreign like vessel is sold from one or more facilities outside the exporting country. The administering authority, in making any determination under this subsection, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of the foreign like vessel produced in facilities outside the exporting country and costs of production of the foreign like vessel produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction.
- “(e) CONSTRUCTED VALUE.—
- “(1) IN GENERAL.—For purposes of this title, the constructed value of a subject vessel shall be an amount equal to the sum of—
 - “(A) the cost of materials and fabrication or other processing of any kind employed in producing the subject vessel, during a period which would ordinarily permit the production of the vessel in the ordinary course of business, and
 - “(B)(i) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market of the country of origin of the subject vessel, or
 - “(ii) if actual data are not available with respect to the amounts described in clause (i), then—
 - “(I) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of the same general category of vessel in the domestic market of the country of origin of the subject vessel,
 - “(II) the weighted average of the actual amounts incurred and realized by producers in the country of origin of the subject vessel (other than the producer of the subject vessel) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market, or
 - “(III) if data is not available under subclause (I) or (II), the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by foreign producers (other than the producer of the subject vessel) in connection with the sale of vessels in the same general category of ves-

sel as the subject vessel in the domestic market of the country of origin of the subject vessel.

The profit shall, for purposes of this paragraph, be based on the average profit realized over a reasonable period of time before and after the sale of the subject vessel and shall reflect a reasonable profit at the time of such sale. For purposes of the preceding sentence, a 'reasonable period of time' shall not, except where otherwise appropriate, exceed 6 months before, or 6 months after, the sale of the subject vessel. In calculating profit under this paragraph, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

"(2) COSTS AND PROFITS BASED ON OTHER REASONABLE METHODS.—When costs and profits are determined under paragraph (1)(B)(ii)(III), such determination shall, except where otherwise appropriate, be based on appropriate export sales by the producer of the subject vessel or, absent such sales, to export sales by other producers of a foreign like vessel or the same general category of vessel as the subject vessel in the country of origin of the subject vessel.

"(3) COSTS OF MATERIALS.—For purposes of paragraph (1)(A), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject vessel produced from such materials.

"(f) SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.—For purposes of subsections (b) and (e)—

"(1) COSTS.—

"(A) IN GENERAL.—Costs shall normally be calculated based on the records of the foreign producer of the subject vessel, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the vessel. The administering authority shall consider all available evidence on proper allocation of costs, including that which is made available by the foreign producer on a timely basis, if such allocations have been historically used by the foreign producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

"(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

"(C) STARTUP COSTS.—

"(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation are affected by startup operations.

"(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

"(I) a producer is using new production facilities or producing a new type of vessel that requires substantial additional investment, and

"(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

"(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the vessel, the producer, or the industry is achieved.

"(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the ship-

builder could have reasonably anticipated and taken into account at the time of sale.

“(2) **TRANSACTIONS DISREGARDED.**—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of a like vessel in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

“(3) **MAJOR INPUT RULE.**—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the subject vessel, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

“SEC. 823. CURRENCY CONVERSION.

“(a) **IN GENERAL.**—In an injurious pricing proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the exchange rate specified with respect to such foreign currency in the forward sale agreement shall be used to convert the foreign currency.

“(b) **DATE OF SALE.**—For purposes of this section, ‘date of sale’ means the date of the contract of sale or, where appropriate, the date on which the material terms of sale are otherwise established. If the material terms of sale are significantly changed after such date, the date of sale is the date of such change. In the case of such a change in the date of sale, the administering authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin due only to fluctuations in the exchange rate between the original date of sale and the new date of sale.

“Subtitle C—Procedures

“SEC. 841. HEARINGS.

“(a) **UPON REQUEST.**—The administering authority and the Commission shall each hold a hearing in the course of an investigation under this title, upon the request of any party to the investigation, before making a final determination under section 805.

“(b) **PROCEDURES.**—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

“SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.

“(a) **IN GENERAL.**—If—

“(1) necessary information is not available on the record, or

“(2) an interested party or any other person—

“(A) withholds information that has been requested by the administering authority or the Commission under this title,

“(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

“(C) significantly impedes a proceeding under this title, or

“(D) provides such information but the information cannot be verified as provided in section 844(g),

the administering authority and the Commission shall, subject to section 844(c), use the facts otherwise available in reaching the applicable determination under this title.

“(b) **ADVERSE INFERENCES.**—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting

to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

- “(1) the petition, or
- “(2) any other information placed on the record.

“(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

“SEC. 843. ACCESS TO INFORMATION.

“(a) INFORMATION GENERALLY MADE AVAILABLE.—

“(1) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation under this title of the progress of that investigation.

“(2) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

“(A) interested parties or other persons providing factual information in connection with a proceeding under this title, and

“(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

“(3) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

“(A) any proprietary information received in the course of a proceeding under this title if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

“(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

“(4) MAINTENANCE OF PUBLIC RECORD.—The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.

“(b) PROPRIETARY INFORMATION.—

“(1) PROPRIETARY STATUS MAINTAINED.—

“(A) IN GENERAL.—Except as provided in subsection (a)(4) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

“(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any other proceeding under this title covering the same subject vessel, or

“(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

“(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

“(i) either—

“(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

“(II) a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention, and

“(ii) either—

“(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

“(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

“(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

“(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

“(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

“(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject vessel) obtained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.

“(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

“(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

“(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted, or

“(ii) if—

“(I) the person submitting the information raises objection to its release, or

“(II) the information is unusually voluminous or complex, not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

“(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

“(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date, and

“(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

“(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

“(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority or the Commission denies a request for information under paragraph (1), then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission, as the case may be, to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

“(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

“(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

“(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

“(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order, except that a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

“(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

“(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

“(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

“(1) IN GENERAL.—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that

determination, and shall publish notice of that determination in the Federal Register.

“(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

“(A) in the case of a determination of the administering authority—

“(i) the names of the foreign producer and the country of origin of the subject vessel,

“(ii) a description sufficient to identify the subject vessel,

“(iii) with respect to an injurious pricing charge, the injurious pricing margin established and a full explanation of the methodology used in establishing such margin,

“(iv) with respect to countermeasures, the scope and duration of countermeasures and, if applicable, any changes thereto, and

“(v) the primary reasons for the determination, and

“(B) in the case of a determination of the Commission—

“(i) considerations relevant to the determination of injury, and

“(ii) the primary reasons for the determination.

“(3) ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.—In addition to the requirements set forth in paragraph (2)—

“(A) the administering authority shall include in a final determination under section 805 or 807(c) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation, concerning the establishment of the injurious pricing charge with respect to which the determination is made, and

“(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation concerning the effects and impact on the industry of the sale of the subject vessel.

“SEC. 844. CONDUCT OF INVESTIGATIONS.

“(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person’s knowledge.

“(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

“(1) NOTIFICATION BY INTERESTED PARTY.—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

“(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

“(c) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

“(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

“(2) such response is not submitted within the applicable time limits, then the administering authority or the Commission (as the case may be) may, subject to subsection (d), disregard all or part of the original and subsequent responses.

“(d) USE OF CERTAIN INFORMATION.—In reaching a determination under section 803, 805, or 807, the administering authority and the Commission shall not decline

to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if—

“(1) the information is submitted by the deadline established for its submission,

“(2) the information can be verified,

“(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

“(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

“(5) the information can be used without undue difficulties.

“(e) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

“(f) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 805 or 807, shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

“(g) VERIFICATION.—The administering authority shall verify all information relied upon in making a final determination under section 805.

“SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIPBUILDING AGREEMENT PANEL REPORTS.

“(a) ACTION BY UNITED STATES INTERNATIONAL TRADE COMMISSION.—

“(1) ADVISORY REPORT.—If a dispute settlement panel under the Shipbuilding Agreement finds in a report that an action by the Commission in connection with a particular proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement, the Trade Representative may request the Commission to issue an advisory report on whether this title permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel concerning those obligations. The Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such request.

“(2) TIME LIMITS FOR REPORT.—The Commission shall transmit its report under paragraph (1) to the Trade Representative within 30 calendar days after the Trade Representative requests the report.

“(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.

“(4) COMMISSION DETERMINATION.—Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission’s action described in paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar days after the request from the Trade Representative is made.

“(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission’s determination under paragraph (4) is implemented.

“(6) REVOCATION OF ORDER.—If, by virtue of the Commission’s determination under paragraph (4), an injurious pricing order is no longer supported by an affirmative Commission determination under this title, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the injurious pricing order.

“(b) ACTION BY ADMINISTERING AUTHORITY.—

“(1) CONSULTATIONS WITH ADMINISTERING AUTHORITY AND CONGRESSIONAL COMMITTEES.—Promptly after a report or other determination by a dispute settlement panel under the Shipbuilding Agreement is issued that contains findings that—

“(A) an action by the administering authority in a proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement,

“(B) the due date for payment of an injurious pricing charge contained in an order issued under section 806 should be amended,

“(C) countermeasures provided for in an order issued under section 807 should be provisionally suspended or reduced pending the final decision of the panel, or

“(D) the scope or duration of countermeasures imposed under section 807 should be narrowed or shortened,

the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) on the matter.

“(2) DETERMINATION BY ADMINISTERING AUTHORITY.—Notwithstanding any other provision of this title, the administering authority shall, in response to a written request from the Trade Representative, issue a determination, or an amendment to or suspension of an injurious pricing or countermeasure order, as the case may be, in connection with the particular proceeding that would render the administering authority’s action described in paragraph (1) not inconsistent with the findings of the panel.

“(3) TIME LIMITS FOR DETERMINATIONS.—The administering authority shall issue its determination, amendment, or suspension under paragraph (2)—

“(A) with respect to a matter described in subparagraph (A) of paragraph (1), within 180 calendar days after the request from the Trade Representative is made, and

“(B) with respect to a matter described in subparagraph (B), (C), or (D) of paragraph (1), within 15 calendar days after the request from the Trade Representative is made.

“(4) CONSULTATIONS BEFORE IMPLEMENTATION.—Before the administering authority implements any determination, amendment, or suspension under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) with respect to such determination, amendment, or suspension.

“(5) IMPLEMENTATION OF DETERMINATION.—The Trade Representative may, after consulting with the administering authority and the congressional committees under paragraph (4), direct the administering authority to implement, in whole or in part, the determination, amendment, or suspension made under paragraph (2).

“(6) IMPLEMENTATION OF DETERMINATION; NOTICE OF IMPLEMENTATION.—The administering authority shall implement the determination, amendment, or suspension under paragraph (2)—

“(A) with respect to a matter described in subparagraph (A) of paragraph (1), only if the injurious pricing margin determined under paragraph (2) differs from the injurious pricing margin in the determination reviewed by the panel, and

“(B) with respect to a matter described in subparagraph (B), (C), or (D) of paragraph (1), upon issuance of the determination, amendment, or suspension under paragraph (2).

The administering authority shall publish notice of such implementation in the Federal Register.

“(c) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

“Subtitle D—Definitions

“SEC. 861. DEFINITIONS.

“For purposes of this title:

“(1) ADMINISTERING AUTHORITY.—The term ‘administering authority’ means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

“(2) COMMISSION.—The term ‘Commission’ means the United States International Trade Commission.

“(3) COUNTRY.—The term ‘country’ means a foreign country, a political subdivision, dependent territory, or possession of a foreign country and, except as provided in paragraph (16)(E)(iii), may not include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

“(4) INDUSTRY.—

“(A) IN GENERAL.—Except as used in section 808, the term ‘industry’ means the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a domestic like vessel.

“(B) PRODUCER.—A ‘producer’ of a domestic like vessel includes an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel.

“(C) CAPABILITY TO PRODUCE A DOMESTIC LIKE VESSEL.—A producer has the ‘capability to produce a domestic like vessel’ if it is capable of producing a domestic like vessel with its present facilities or could adapt its facilities in a timely manner to produce a domestic like vessel.

“(D) RELATED PARTIES.—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

“(ii) For purposes of clause (i), a domestic producer and the foreign producer, seller, or United States buyer shall be considered to be related parties, if—

“(I) the domestic producer directly or indirectly controls the foreign producer, seller or United States buyer,

“(II) the foreign producer, seller, or United States buyer directly or indirectly controls the domestic producer,

“(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

“(IV) the domestic producer and the foreign producer, seller, or United States buyer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

“(E) PRODUCT LINES.—In an investigation under this title, the effect of the sale of the subject vessel shall be assessed in relation to the United States production (or production capability) of a domestic like vessel if available data permit the separate identification of production (or production capability) in terms of such criteria as the production process or the producer’s profits. If the domestic production (or production capability) of a domestic like vessel has no separate identity in terms of such criteria, then the effect of the sale shall be assessed by the examination of the production (or production capability) of the narrowest group or range of vessels, which includes a domestic like vessel, for which the necessary information can be provided.

“(5) BUYER.—The term ‘buyer’ means any person who acquires an ownership interest in a vessel, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, including an individual or company which owns or controls a buyer. There may be more than one buyer of any one vessel.

“(6) UNITED STATES BUYER.—The term ‘United States buyer’ means a buyer that is any of the following:

“(A) A United States citizen.

“(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of

whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

“(C) A juridical entity that is owned or controlled by nationals or entities described in subparagraphs (A) and (B). For the purposes of this subparagraph—

“(i) the term ‘own’ means having more than a 50 percent interest, and

“(ii) the term ‘control’ means the actual ability to have substantial influence on corporate behavior, and control is presumed to exist where there is at least a 25 percent interest.

If ownership of a company is established under clause (i), other control is presumed not to exist unless it is otherwise established.

“(7) OWNERSHIP INTEREST.—An ‘ownership interest’ in a vessel includes any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the administering authority shall consider—

“(A) the terms and circumstances of the transaction which conveys the interest,

“(B) commercial practice,

“(C) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries, and

“(D) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of and the risk for the operation of the vessel for a significant part of the life-time of the vessel.

“(8) VESSEL.—

“(A) IN GENERAL.—Except as otherwise specifically provided under international agreements, the term ‘vessel’ means—

“(i) a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredgers), and

“(ii) a tug of 365 kilowatts or more,

that is produced in a Shipbuilding Agreement Party or a country that is not a Shipbuilding Agreement Party and not a WTO member.

“(B) EXCLUSIONS.—The term ‘vessel’ does not include—

“(i) any fishing vessel destined for the fishing fleet of the country in which the vessel is built,

“(ii) any military vessel,

“(iii) a military reserve vessel, and

“(iv) any vessel sold before the date that the Shipbuilding Agreement enters into force with respect to the United States, except that any vessel sold after December 21, 1994, for delivery more than 5 years after the date of the contract of sale shall be a ‘vessel’ for purposes of this title unless the shipbuilder demonstrates to the administering authority that the extended delivery date was for normal commercial reasons and not to avoid applicability of this title.

“(C) SELF-PROPELLED SEAGOING VESSEL.—A vessel is ‘self-propelled seagoing’ if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

“(D) MILITARY VESSEL.—A ‘military vessel’ is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes.

“(E) MILITARY RESERVE VESSEL.—A ‘military reserve vessel’ is a vessel that has been constructed with national defense features and characteristics required by the Secretary of Defense for the purpose of supporting the United States Armed Forces in a contingency.

“(9) LIKE VESSEL.—The term ‘like vessel’ means a vessel of the same type, same purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel.

“(10) DOMESTIC LIKE VESSEL.—The term ‘domestic like vessel’ means a like vessel produced in the United States.

“(11) FOREIGN LIKE VESSEL.—Except as used in section 822(e)(1)(B)(ii)(II), the term ‘foreign like vessel’ means a like vessel produced by the foreign producer of the subject vessel for sale in the producer’s domestic market or in a third country.

“(12) SAME GENERAL CATEGORY OF VESSEL.—The term ‘same general category of vessel’ means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

“(13) SUBJECT VESSEL.—The term ‘subject vessel’ means a vessel subject to investigation under section 801, 808, or 809.

“(14) FOREIGN PRODUCER.—The term ‘foreign producer’ means the producer or producers of the subject vessel.

“(15) EXPORTING COUNTRY.—The term ‘exporting country’ means the country in which the subject vessel was built.

“(16) MATERIAL INJURY.—

“(A) IN GENERAL.—The term ‘material injury’ means harm which is not inconsequential, immaterial, or unimportant.

“(B) SALE AND CONSEQUENT IMPACT.—In making determinations under sections 803(a) and 805(b), the Commission in each case—

“(i) shall consider—

“(I) the sale of the subject vessel,

“(II) the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and

“(III) the impact of the sale of the subject vessel on domestic producers of the domestic like vessel, but only in the context of production operations within the United States, and

“(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

In the notification required under section 805(d), the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

“(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

“(i) SALE OF THE SUBJECT VESSEL.—In evaluating the sale of the subject vessel, the Commission shall consider whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

“(ii) PRICE.—In evaluating the effect of the sale of the subject vessel on prices, the Commission shall consider whether—

“(I) there has been significant price underselling of the subject vessel as compared with the price of a domestic like vessel, and

“(II) the effect of the sale of the subject vessel otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

“(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

“(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

“(II) factors affecting domestic prices, including with regard to sales,

“(III) actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment,

“(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

“(V) the magnitude of the injurious pricing margin.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

“(D) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

“(E) THREAT OF MATERIAL INJURY.—

“(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of the sale of the subject vessel, the Commission shall consider, among other relevant economic factors—

“(I) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to United States buyers, taking into account the availability of other export markets to absorb any additional exports,

“(II) whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to United States buyers,

“(III) whether sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales,

“(IV) the potential for product-shifting if production facilities in the exporting country, which can presently be used to produce a foreign like vessel or could be adapted in a timely manner to produce a foreign like vessel, are currently being used to produce other types of vessels,

“(V) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

“(VI) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

“(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

“(iii) EFFECT OF INJURIOUS PRICING IN THIRD-COUNTRY MARKETS.—

“(I) IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.

“(II) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities as a whole shall be treated as a single foreign country.

“(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

“(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii) of this subparagraph, the Commission shall cumulatively assess the effects of sales of foreign like vessels from all foreign producers with respect to which—

“(I) petitions were filed under section 802(b) on the same day,

“(II) investigations were initiated under section 802(a) on the same day, or

“(III) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

“(ii) EXCEPTIONS.—The Commission shall not cumulatively assess the effects of sales under clause (i)—

“(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those sales before the Commission’s final determination is made, or

“(II) from any producer with respect to which the investigation has been terminated.

“(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority’s final determination, and shall include such comments and the administering authority’s final determination in the record for the subsequent investigation.

“(G) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

“(i) petitions were filed under section 802(b) on the same day,

“(ii) investigations were initiated under section 802(a) on the same day, or

“(iii) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day, if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

“(17) INTERESTED PARTY.—The term ‘interested party’ means, in a proceeding under this title—

“(A)(i) the foreign producer, seller (other than the foreign producer), and the United States buyer of the subject vessel, or

“(ii) a trade or business association a majority of the members of which are the foreign producer, seller, or United States buyer of the subject vessel,

“(B) the government of the country in which the subject vessel is produced or manufactured,

“(C) a producer that is a member of an industry,

“(D) a certified union or recognized union or group of workers which is representative of an industry,

“(E) a trade or business association a majority of whose members are producers in an industry,

“(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

“(G) for purposes of section 807, a purchaser who, after the effective date of an order issued under that section, entered into a contract of sale with the foreign producer that is subject to the order.

“(18) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is or has been—

“(A) material injury to an industry in the United States,

“(B) threat of material injury to such an industry, or

“(C) material retardation of the establishment of an industry in the United States,

by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

“(19) ORDINARY COURSE OF TRADE.—The term ‘ordinary course of trade’ means the conditions and practices which, for a reasonable time before the sale of the subject vessel, have been normal in the shipbuilding industry with respect to a like vessel. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

“(A) Sales disregarded under section 822(b)(1).

“(B) Transactions disregarded under section 822(f)(2).

“(20) NONMARKET ECONOMY COUNTRY.—

“(A) IN GENERAL.—The term ‘nonmarket economy country’ means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of vessels in such country do not reflect the fair value of the vessels.

“(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

“(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

“(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

“(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

“(iv) the extent of government ownership or control of the means of production,

“(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

“(vi) such other factors as the administering authority considers appropriate.

“(C) DETERMINATION IN EFFECT.—

“(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

“(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

“(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle A.

“(21) SHIPBUILDING AGREEMENT.—The term ‘Shipbuilding Agreement’ means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

“(22) SHIPBUILDING AGREEMENT PARTY.—The term ‘Shipbuilding Agreement Party’ means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

“(23) WTO AGREEMENT.—The term ‘WTO Agreement’ means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

“(24) WTO MEMBER.—The term ‘WTO member’ means a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

“(25) TRADE REPRESENTATIVE.—The term ‘Trade Representative’ means the United States Trade Representative.

“(26) AFFILIATED PERSONS.—The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

“(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

“(B) Any officer or director of an organization and such organization.

“(C) Partners.

“(D) Employer and employee.

“(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, and such organization.

“(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

“(G) Any person who controls any other person, and such other person. For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

“(27) INJURIOUS PRICING.—The term ‘injurious pricing’ refers to the sale of a vessel at less than fair value.

“(28) INJURIOUS PRICING MARGIN.—

“(A) IN GENERAL.—The term ‘injurious pricing margin’ means the amount by which the normal value exceeds the export price of the subject vessel.

“(B) MAGNITUDE OF THE INJURIOUS PRICING MARGIN.—The magnitude of the injurious pricing margin used by the Commission shall be—

“(i) in making a preliminary determination under section 803(a) in an investigation (including any investigation in which the Commission cumulatively assesses the effect of sales under paragraph (16)(F)(i)), the injurious pricing margin or margins published by the administering authority in its notice of initiation of the investigation; and

“(ii) in making a final determination under section 805(b), the injurious pricing margin or margins most recently published by the administering authority before the closing of the Commission’s administrative record.

“(29) **COMMERCIAL INTEREST REFERENCE RATE.**—The term ‘Commercial Interest Reference Rate’ or ‘CIRR’ means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organization for Economic Cooperation, and entered into on December 21, 1994.

“(30) **ANTIDUMPING.**—

“(A) **WTO MEMBERS.**—In the case of a WTO member, the term ‘antidumping’ refers to action taken pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

“(B) **OTHER CASES.**—In the case of any country that is not a WTO member, the term ‘antidumping’ refers to action taken by the country against the sale of a vessel at less than fair value that is comparable to action described in subparagraph (A).

“(31) **BROAD MULTIPLE BID.**—The term ‘broad multiple bid’ means a bid in which the proposed buyer extends an invitation to at least all the producers in the industry known by the buyer to be capable of building the subject vessel.”.

SEC. 102. ENFORCEMENT OF COUNTERMEASURES.

Part II of title IV of the Tariff Act of 1930 is amended by adding at the end the following:

“SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

“(a) **IN GENERAL.**—Notwithstanding any other provision of law, upon receiving from the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.

“(b) **EXCEPTIONS.**—Subsection (a) shall not be applied to deny a permit for the following:

“(1) To unlade any United States citizen or permanent legal resident alien from a vessel included in the list described in subsection (a), or to unlade any refugee or any alien who would otherwise be eligible to apply for asylum and withholding of deportation under the Immigration and Nationality Act.

“(2) To lade or unlade any crewmember of such vessel.

“(3) To lade or unlade coal and other fuel supplies (for the operation of the listed vessel), ships’ stores, sea stores, and the legitimate equipment of such vessel.

“(4) To lade or unlade supplies for the use or sale on such vessel.

“(5) To lade or unlade such other merchandise, baggage, or passenger as the Customs Service shall determine necessary to protect the immediate health, safety, or welfare of a human being.

“(c) **CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.**—

“(1) **PETITION FOR CORRECTION.**—If the master of any vessel whose application for a permit to lade or unlade has been denied under this section believes that such denial resulted from a ministerial or clerical error, not amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.

“(2) **INAPPLICABILITY OF SECTIONS 514 AND 520.**—Notwithstanding paragraph (1), imposition of countermeasures under this section shall not be deemed an exclusion or other protestable decision under section 514, and shall not be subject to correction under section 520.

“(3) **PETITIONS SEEKING ADMINISTRATIVE REVIEW.**—Any petition seeking administrative review of any matter regarding the Secretary of Commerce’s decision to list a vessel under section 807 must be brought under that section.

“(d) **PENALTIES.**—In addition to any other provision of law, the Customs Service may impose a civil penalty of not to exceed \$10,000 against the master of any vessel—

“(1) who submits false information in requesting any permit to lade or unlade; or

“(2) who attempts to, or actually does, lade or unlade in violation of any denial of such permit under this section.”.

SEC. 103. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

(a) **JUDICIAL REVIEW.**—Part III of title IV of the Tariff Act of 1930 is amended by inserting after section 516A the following:

“SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.

“(a) REVIEW OF DETERMINATION.—

“(1) IN GENERAL.—Within 30 days after the date of publication in the Federal Register of—

“(A)(i) a determination by the administering authority under section 802(c) not to initiate an investigation,

“(ii) a negative determination by the Commission under section 803(a) as to whether there is or has been reasonable indication of material injury, threat of material injury, or material retardation,

“(iii) a determination by the administering authority to suspend or revoke an injurious pricing order under section 806(d) or (e),

“(iv) a determination by the administering authority under section 807(c),

“(v) a determination by the administering authority in a review under section 807(d),

“(vi) a determination by the administering authority concerning whether to extend the scope or duration of a countermeasure order under section 807(e)(3)(B)(ii),

“(vii) a determination by the administering authority to amend a countermeasure order under section 807(e)(6),

“(viii) a determination by the administering authority in a review under section 807(g),

“(ix) a determination by the administering authority under section 807(i) to terminate proceedings, or to amend or revoke a countermeasure order,

“(x) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(D) of that section, or

“(B)(i) an injurious pricing order based on a determination described in subparagraph (A) of paragraph (2),

“(ii) notice of a determination described in subparagraph (B) of paragraph (2),

“(iii) notice of implementation of a determination described in subparagraph (C) of paragraph (2), or

“(iv) notice of revocation of an injurious pricing order based on a determination described in subparagraph (D) of paragraph (2),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

“(2) REVIEWABLE DETERMINATIONS.—The determinations referred to in paragraph (1)(B) are—

“(A) a final affirmative determination by the administering authority or by the Commission under section 805, including any negative part of such a determination (other than a part referred to in subparagraph (B)),

“(B) a final negative determination by the administering authority or the Commission under section 805,

“(C) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(A) of that section, and

“(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

“(3) EXCEPTION.—Notwithstanding the 30-day limitation imposed by paragraph (1) with regard to an order described in paragraph (1)(B)(i), a final affirmative determination by the administering authority under section 805 may be contested by commencing an action, in accordance with the provisions of paragraph (1), within 30 days after the date of publication in the Federal Register of a final negative determination by the Commission under section 805.

“(4) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

“(b) STANDARDS OF REVIEW.—

“(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

“(A) in an action brought under subparagraph (A) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

“(B) in an action brought under subparagraph (B) of subsection (a)(1), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

“(2) RECORD FOR REVIEW.—

“(A) IN GENERAL.—For purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

“(i) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 843(a)(2); and

“(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

“(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

“(c) STANDING.—Any interested party who was a party to the proceeding under title VIII shall have the right to appear and be heard as a party in interest before the United States Court of International Trade in an action under this section. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, and within the time prescribed by rules of the court.

“(d) DEFINITIONS.—For purposes of this section:

“(1) ADMINISTERING AUTHORITY.—The term ‘administering authority’ has the meaning given that term in section 861(1).

“(2) COMMISSION.—The term ‘Commission’ means the United States International Trade Commission.

“(3) INTERESTED PARTY.—The term ‘interested party’ means any person described in section 861(17).”.

(b) CONFORMING AMENDMENTS.—

(1) JURISDICTION OF THE COURT.—Section 1581(c) of title 28, United States Code, is amended by inserting “or 516B” after “section 516A”.

(2) RELIEF.—Section 2643 of title 28, United States Code, is amended—

(A) in subsection (c)(1) by striking “and (5)” and inserting “(5), and (6)”; and

(B) in subsection (c) by adding at the end the following new paragraph:

“(6) In any civil action under section 516B of the Tariff Act of 1930, the Court of International Trade may not issue injunctions or any other form of equitable relief, except with regard to implementation of a countermeasure order under section 468 of that Act, upon a proper showing that such relief is warranted.”.

TITLE II—OTHER PROVISIONS

SEC. 201. EQUIPMENT AND REPAIR OF VESSELS.

Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466), is amended by adding at the end the following new subsection:

“(i) The duty imposed by subsection (a) shall not apply with respect to activities occurring in a Shipbuilding Agreement Party, as defined in section 861(22), with respect to—

“(1) self-propelled seagoing vessels of 100 gross tons or more that are used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredges), and

“(2) tugs of 365 kilowatts or more.

A vessel shall be considered ‘self-propelled seagoing’ if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.”.

SEC. 202. EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.

No person other than the United States—

(1) shall have any cause of action or defense under the Shipbuilding Agreement or by virtue of congressional approval of the agreement, or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, the District of Columbia, any State, any political subdivision of a State, or any territory or possession of the United States on the ground that such action or inaction is inconsistent with such agreement.

SEC. 203. IMPLEMENTING REGULATIONS.

After the date of the enactment of this Act, the heads of agencies with functions under this Act and the amendments made by this Act may issue such regulations as may be necessary to ensure that this Act is appropriately implemented on the date the Shipbuilding Agreement enters into force with respect to the United States.

SEC. 204. AMENDMENTS TO THE MERCHANT MARINE ACT, 1936.

The Merchant Marine Act, 1936, is amended as follows:

(1) Section 511(a)(2) (46 App. U.S.C. 1161(a)(2)) is amended by inserting after “1939,” the following: “or, if the vessel is a Shipbuilding Agreement vessel, constructed in a Shipbuilding Agreement Party, but only with regard to moneys deposited, on or after the date on which the Shipbuilding Trade Agreement Act takes effect, into a construction reserve fund established under subsection (b)”.

(2) Section 601(a) (46 App. U.S.C. 1171(a)) is amended by striking “, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date” and inserting “and that such vessel or vessels were built in the United States, or, if the vessel or vessels are Shipbuilding Agreement vessels, in a Shipbuilding Agreement Party”.

(3) Section 606(6) (46 App. U.S.C. 1176(6)) is amended by inserting “or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party or in the United States” before “, except in an emergency.”

(4) Section 607 (46 App. U.S.C. 1177) is amended as follows:

(A) Subsection (a) is amended by inserting “or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,” after “built in the United States”.

(B) Subsection (k) is amended as follows:

(i) Paragraph (1) is amended by striking subparagraph (A) and inserting the following:

“(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

“(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,”.

(ii) Paragraph (2)(A) is amended to read as follows:

“(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

“(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States, but only with regard to moneys deposited into the fund on or after the date on which the Shipbuilding Trade Agreement Act takes effect,”.

(5) Section 610 (46 App. U.S.C. 1180) is amended by striking “shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,” and inserting “shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party.”

(6) Section 901(b)(1) (46 App. U.S.C. 1241(b)(1)) is amended by striking the third sentence and inserting the following:

“For purposes of this section, the term ‘privately owned United States-flag commercial vessels’ shall be deemed to include—

“(A) any privately owned United States-flag commercial vessel constructed in the United States, and if rebuilt, rebuilt in the United States or in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and

“(B) any privately owned vessel constructed in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and if rebuilt, rebuilt in a Shipbuilding Agreement Party or in the United States, that is documented pursuant to chapter 121 of title 46, United States Code.

The term ‘privately owned United States-flag commercial vessels’ shall also be deemed to include any cargo vessel that so qualified pursuant to section 615 of this Act or this paragraph before the date on which the Shipbuilding Trade Agreement Act takes effect. The term ‘privately owned United States-flag commercial vessels’ shall not be deemed to include any liquid bulk cargo vessel that does not meet the requirements of section 3703a of title 46, United States Code.”

(7) Section 905 (46 App. U.S.C. 1244) is amended by adding at the end the following:

“(h) The term ‘Shipbuilding Agreement’ means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

“(i) The term ‘Shipbuilding Agreement Party’ means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

“(j) The term ‘Shipbuilding Agreement vessel’ means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

“(k) The term ‘Export Credit Understanding’ means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

“(l) The term ‘Export Credit Understanding vessel’ means a vessel to which the Secretary determines the Export Credit Understanding applies.”

(8) Section 1104A (46 App. U.S.C. 1274) is amended as follows:

(A) Paragraph (5) of subsection (b) is amended to read as follows:

“(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percent per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary, except that, with respect to Export Credit Understanding vessels, and Shipbuilding Agreement vessels, the obligations shall bear interest at a rate the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.”

(B) Subsection (i) is amended to read as follows:

“(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

“(A) the general 75 percent or less limitation contained in subsection (b)(2),

“(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1112(b), or

“(C) the 80 percent or less limitation in the 3rd proviso to such subsection, establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

“(2) With respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.”

(C) Section 1104B(b) (46 App. U.S.C. 1274a(b)) is amended by striking the period at the end and inserting the following:

“, except that, with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.”

SEC. 205. APPLICABILITY OF TITLE XI AMENDMENTS.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Notwithstanding any provision of the Shipbuilding Agreement or the Export Credit Understanding, the amendments made by paragraph (8) of section 204 shall not apply with respect to any commitment to guarantee made under title XI of the Merchant Marine Act, 1936, before January 1, 1999, with respect to a vessel delivered—

(A) before January 1, 2002, or

(B) in the case of unusual circumstances to which paragraph (2) applies, as soon after January 1, 2002, as is practicable.

(2) UNUSUAL CIRCUMSTANCES.—This paragraph applies in a case in which unusual circumstances beyond the control of the parties concerned prevent the delivery of a vessel by January 1, 2002. As used in this paragraph, the term “unusual circumstances” means acts of God (other than ordinary storms or inclement weather conditions), labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances.

SEC. 206. WITHDRAWAL FROM THE AGREEMENT.**(a) WITHDRAWAL.—**

(1) **NOTICE.**—The President shall give notice, under Article 14 of the Shipbuilding Agreement, of intent of the United States to withdraw from the Shipbuilding Agreement, as soon as is practicable after one or more Shipbuilding Agreement Parties give notice, under such article, of intent to withdraw from the Shipbuilding Agreement, if paragraph (2) applies.

(2) **TONNAGE OF NEW CONSTRUCTION IN WITHDRAWING PARTIES.**—This paragraph applies if the combined gross tonnage of new Shipbuilding Agreement vessels constructed in all Shipbuilding Agreement Parties who have given notice to withdraw from the Shipbuilding Agreement, which were delivered in the calendar year preceding the calendar year in which the notice is given, is 15 percent or more of the gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuilding Agreement Parties and were delivered in the calendar year preceding the calendar year in which the notice is given.

(3) **TERMINATION OF WITHDRAWAL.**—If a Shipbuilding Agreement Party described in paragraph (2) takes action to terminate its withdrawal from the Shipbuilding Agreement, so that paragraph (2) would not apply if that Party had not given the notice to withdraw, the President may take the necessary steps to terminate the notice of withdrawal of the United States from the Shipbuilding Agreement.

(b) **REINSTATEMENT OF LAWS.**—If the United States withdraws from the Shipbuilding Agreement, on the date on which such withdrawal becomes effective, the amendments made by section 204 shall be deemed not to have been made, and the provisions of law amended by section 204 shall, on and after such date, be effective as if this Act had not been enacted.

SEC. 207. OTHER LAWS NOT AFFECTED.

The Shipbuilding Agreement shall not affect, directly or indirectly, the Merchant Marine Act, 1920, the Act of June 19, 1886 (46 U.S.C. App. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II to the Shipbuilding Agreement, and shall not provide any mechanism to subject any producer of vessels in the United States to financial penalties, duties, bid restrictions, unfavorable bid preferences, or withdrawal of concessions under the GATT 1994 or other Uruguay Round Agreements, in the competition for international commercial vessel construction or reconstruction orders because of construction of vessels by United States shipbuilders for operation in the coastwise trade of the United States.

SEC. 208. PROTECTION OF UNITED STATES INTERESTS.

Nothing in the Shipbuilding Agreement shall be construed to prevent the United States from taking any action which it considers necessary for the protection of essential security interests or from invoking its sovereign authority to define, for purposes of exclusion from coverage under the Shipbuilding Agreement and from any dispute or challenge based on Annex I to the Shipbuilding Agreement, “military vessel”, “military reserve vessel”, or “essential security interest” on a case by case basis, as determined by the Secretary of Defense.

SEC. 209. DEFINITIONS.

As used in this title—

(1) the terms “Shipbuilding Agreement”, “Shipbuilding Agreement Party”, “Shipbuilding Agreement Vessels”, and “Export Credit Understanding” have the meanings given those terms in subsections (h), (i), (j), and (k), respectively, of section 905 of the Merchant Marine Act, 1936, as added by section 204(7) of this Act; and

(2) the terms “GATT 1994” and “Uruguay Round Agreements” have the meanings given those terms in section 2 of the Uruguay Round Agreements Act.

TITLE III—REVENUE OFFSET

SEC. 301. PENALTIES FOR FAILURE TO DISCLOSE POSITION THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT INCLUDIBLE IN GROSS INCOME.

(a) **IN GENERAL.**—Section 883 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(d) **PENALTIES FOR FAILURE TO DISCLOSE POSITION THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT INCLUDIBLE IN GROSS INCOME.**—

“(1) **IN GENERAL.**—A taxpayer who, with respect to any tax imposed by this title, takes the position that any of its gross income derived from the international operation of a ship or ships is not includible in gross income by reason

of subsection (a)(1) or section 872(b)(1) shall be entitled to such treatment only if such position is disclosed (in such manner as the Secretary may prescribe) on the return of tax for such tax (or any statement attached to such return).

“(2) ADDITIONAL PENALTIES FOR FAILING TO DISCLOSE POSITION.—If a taxpayer fails to meet the requirement of paragraph (1) with respect to any taxable year—

“(A) the amount of the income from the international operation of a ship or ships—

“(i) which is from sources without the United States, and

“(ii) which is attributable to a fixed place of business in the United States,

shall be treated for purposes of this title as effectively connected with the conduct of a trade or business within the United States, and

“(B) no deductions or credits shall be allowed which are attributable to income from the international operation of a ship or ships.

“(3) REASONABLE CAUSE EXCEPTION.—This subsection shall not apply to a failure to disclose a position if it is shown that such failure is due to reasonable cause and not due to willful neglect.”

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 872(b) of such Code is amended by striking “Gross income” and inserting “Except as provided in section 883(d), gross income”.

(2) Paragraph (1) of section 883(a) of such Code is amended by striking “Gross income” and inserting “Except as provided in subsection (d), gross income”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Notwithstanding section 3, the amendments made by this section shall apply to taxable years beginning after the later of—

(A) December 31, 1996, or

(B) the date that the Shipbuilding Agreement enters into force with respect to the United States.

(2) COORDINATION WITH TREATIES.—The amendments made by this section shall not apply in any case where their application would be contrary to any treaty obligation of the United States.

(d) INFORMATION TO BE PROVIDED BY CUSTOMS SERVICE.—The United States Customs Service shall provide the Secretary of the Treasury or his delegate with such information as may be specified by such Secretary in order to enable such Secretary to determine whether ships which are not registered in the United States are engaged in transportation to or from the United States.

PURPOSE AND SUMMARY

H.R. 2754, the Shipbuilding Trade Agreement Act, would implement the Organization for Economic Cooperation and Development (OECD) Agreement on Shipbuilding. As amended by the Committee on National Security, the bill would implement the OECD agreement under U.S. law.

The OECD Agreement is intended to eliminate virtually all shipbuilding subsidies granted by signatory countries either directly to shipbuilders or indirectly through ship operators or other entities. The Agreement also contains an injurious pricing code to prevent below cost “dumping” in the shipbuilding industry, a comprehensive approach to government financing of ships for export and domestic sales, and a dispute resolution mechanism. H.R. 2754, as amended by the Committee on National Security, would expand the remedies available to U.S. shipbuilders under the OECD Agreement, would add a definition of “military reserve vessels” to ensure that vessels prepositioned for military contingencies are excluded from coverage under the agreement, would provide for a gradual phase out of the current shipbuilding loan guarantee program, would provide the president with authority to withdraw from the OECD Agreement if other major shipbuilding parties withdraw, would guarantee that the OECD agreement would not adversely affect the Jones Act or other U.S. cabotage laws, and would clarify

that nothing in the implementing legislation or the Agreement would prevent the United States from taking any action which it considers necessary for the protection of its essential security interests.

BACKGROUND AND NEED FOR LEGISLATION

In December 1994, after five years of negotiations, the Organization for Economic Cooperation and Development Agreement on Shipbuilding was signed by the United States, the European Commission (on behalf of the twelve European member countries), Norway, South Korea and Japan. Negotiations leading to this agreement were initiated by the United States following complaints by United States shipbuilding companies that foreign shipbuilders had been engaging in unfair competitive practices.

The OECD agreement was scheduled to enter into force January 1, 1996. However, because the agreement had not been ratified by the United States and Japan by that date, the signatory countries agreed to extend the ratification deadline until June 15, 1996. Under this extension, the agreement would enter into force on July 15, 1996. H.R. 2754 is the legislation by which Congress would ratify the OECD agreement.

LEGISLATIVE HISTORY

H.R. 2754, the Shipbuilding Trade Agreement Act, was introduced on December 11, 1995. The bill was referred to the Committee on Ways and Means and to the Committee on National Security. On March 18, 1996, the Committee on Ways and Means agreed to an amendment in the nature of a substitute to H.R. 2754 and ordered the bill, as amended, favorably reported by a vote of 27 to 4.

On May 22, 1996, the Special Oversight Panel on the Merchant Marine of the Committee on National Security held a hearing to consider H.R. 2754. At this hearing, testimony was received from Representatives Philip M. Crane and Sam Gibbons, from the office of the United States Trade Representative, from large and small American shipyards, from a shipyard labor union, and from a representative of a U.S. flag ship operator.

On May 29, 1996, the Committee on National Security met to consider H.R. 2754. The committee agreed to an amendment in the nature of a substitute to the bill and ordered the bill favorably reported to the House.

SECTION-BY-SECTION ANALYSIS

H.R. 2754 is organized unlike most bills reported by the Committee on National Security. As introduced in the House, the bill contains three introductory sections. Section 1 would provide the short title of the bill. Section 2 would specify congressional approval of the OECD agreement. Section 3 specifies that H.R. 2754 would take effect when the OECD agreement enters into force. The amendment in the nature of a substitute agreed to by the Committee on National Security would not amend sections 1 and 2. However, a delayed phase out of the current shipbuilding loan guaran-

tee program would be an exception to the effective date provision of section 3 of the bill.

In addition to the three introductory sections, H.R. 2754 also contains two separate titles. In general, title I would amend the Tariff Act of 1930 by adding a new title VIII to that Act concerning injurious, anti-competitive pricing practices and countermeasures. Title II of H.R. 2754 addresses miscellaneous other provisions. The changes that would be made to titles I and II of the bill by the Committee on National Security's amendment in the nature of a substitute are discussed below.

For the sake of brevity, no effort has been made in this report to provide a detailed explanation of every section of the introduced bill. Only those sections of the introduced bill that fall within the legislative jurisdiction of the Committee on National Security or that would be changed by the committee's amendment are discussed. In addition, the amendment of the Committee on Ways and Means to H.R. 2754 added a new title III to the bill, dealing with revenue offsets. The amendment in the nature of a substitute agreed to by the Committee on National Security did not address title III.

Title I—Injurious pricing and countermeasures

The first change to H.R. 2754 that would be made by the Committee on National Security's amendment in the nature of a substitute concerns section 802 of the Tariff Act of 1930, as added by title I of the bill. Section 802 relates to procedures for initiating an injurious pricing investigation under the Tariff Act of 1930. Subsection "(I)" would grant U.S. shipbuilders standing to file a petition to initiate an injurious pricing proceeding based upon evidence that a U.S. shipbuilder was invited to tender a bid to build a ship. The committee does not believe that an invitation to submit a bid should be a precondition for having standing to initiate an injurious pricing investigation. The committee amendment would amend Subsection "(I)" to delete the bill's current standing requirement.

The Committee on National Security also recommends a new Section 809 of the Tariff Act of 1930. This new section would provide a remedy for a U.S. shipbuilder who loses out on a sale where the vessel is not sold to a U.S. party. As currently drafted, the anti-dumping provisions only apply to vessels sold to U.S. parties. Under section 808, only a government (and not private shipbuilding companies) may complain to another government concerning cases in which a vessel built in another country is sold below cost to a third party. For example, the provision in the introduced bill would cover a situation in which a Korean shipyard sells a vessel to a U.S. purchaser, and an Italian shipyard complains that the Korean shipyard has undercut the pricing rules. Conversely, however, in a case in which an Italian shipbuilder sells to a Japanese (or any other non-U.S.) purchaser, there is no mechanism for a U.S. shipbuilder to complain officially to Japanese authorities. Under the OECD agreement, only the United States government, as a shipbuilding agreement party, may lodge such a complaint. New section 809 would permit a U.S. shipbuilder to petition the United States Trade Representative in circumstances in which a vessel is sold below cost in another country, in addition to those

cases in which a vessel is sold to a U.S. person. This section would further require the United States Trade Representative, upon receipt of such a petition from a U.S. shipbuilder, to request the administering authority to determine whether there was reasonable cause to believe that the subject vessel had been sold at less than fair value and whether the United States shipbuilding industry had been materially injured by the sale.

The committee amendment in the nature of a substitute also would add a definition for the term “military reserve vessel” to section 861(8) of H.R. 2754. This would clarify that vessels procured and owned by private parties for sealift, such as those used by the Marine Corps as prepositioned wartime vessels, are excluded from the application of this Act or the OECD Agreement. The committee amendment further would clarify that vessels outfitted with national defense features in accordance with requirements imposed by the Secretary of Defense are likewise excluded from coverage under this Act or the OECD Agreement. The committee is also concerned that the existing term “military vessel” is drafted too narrowly to exclude from coverage vessels owned and operated by the United States Coast Guard. The committee does not believe that this is the intent.

Title II—Other provisions

Section 204 of H.R. 2754, as introduced, would amend the Merchant Marine Act, 1936 to remove a number of U.S. build or U.S. preference requirements contained in current law. Specifically, section 204(1) would allow post-enactment tax sheltered deposits to the Capital Reserve Fund to be used for the acquisition of vessels constructed in OECD Agreement signatory countries. Current law restricts the use of those deposits to the acquisition of commercial vessels built in U.S. shipyards. The requirement that the vessels be documented in the United States would be retained. Section 204(4) would provide similar treatment for post-enactment deposits to the Capital Construction Fund.

Sections 204(2), 204(3), and 204(5) would eliminate the general requirement that vessels enrolled in the operating differential subsidy (ODS) program be built and repaired in a United States shipyard. Elimination of this U.S. build and repair requirement should in no way be considered as authorization for the Department of Transportation to continue the ODS program beyond its current expiration date. A new, more cost effective Maritime Security Program to replace the expiring ODS program has passed the House and is currently pending in the Senate.

Section 204(6) would eliminate the requirement that a vessel not constructed in the United States be documented under the United States flag for three years before it is eligible to carry certain types of commodities under the cargo preference laws.

Section 204(7) would prevent the Secretary of Transportation from issuing loan guarantee commitments that are inconsistent with the Export Credit Understanding or the OECD Agreement. The effect of this provision would be to generally prevent the Secretary of Transportation from issuing loan guarantee commitments under the so-called “Title XI” loan guarantee program where the equity requirements are less than 20 percent of the cost of the ves-

sel, and the maximum repayment term is greater than 12 years. This provision would apply to vessels covered under the terms of the OECD Agreement or the Export Credit Understanding, including vessels built for the coastwise trades, intercoastal trades or vessels engaged in foreign commerce.

A new section 205 would be added by the committee amendment in the nature of a substitute to H.R. 2754. The purpose of section 205 would be to delay the effective date of the amendments contained in section 204(7). Section 205 would allow the Secretary of Transportation to continue to issue loan guarantee commitments in appropriate cases, consistent with existing law, until January 1, 1999. Vessels to which commitments would be issued on or before January 1, 1999 would be required to be delivered on or before January 1, 2002. The delay in the implementation date for the changes to the Title XI program is critical to the ability of those U.S. shipyards which were formerly building exclusively naval vessels for the last 20 years to transition to building a combination of naval and commercial vessels. If the provisions of the existing title XI loan guarantee program were to be terminated abruptly (as is contemplated by the introduced version of H.R. 2754), some U.S. shipyards that have been dependent on defense business could lose their ability to remain viable commercial concerns. The committee believes that maintenance of the defense industrial base and the skills possessed by employees of these large shipyards is sufficiently critical to our national security that the current loan guarantee program should be phased out only gradually, thereby minimizing the prospects of financial loss for shipyards converting to more commercial ship construction work. In light of numerous exceptions and exemptions granted to foreign shipyards under the OECD Agreement, the committee believes the modest extension of the current program that would be made by section 205 is reasonable and appropriate.

Section 206 would authorize the president to give notice of intention to withdraw from the OECD Agreement under Article 14 of that agreement if another signatory country gives notice of intention to withdraw. This provision would only apply if an OECD Agreement party or parties has delivered 15 percent or more of the gross tonnage of vessels constructed and delivered in the previous year. If the United States withdraws from the Agreement, this section would reinstate the provisions of Section 204 as if they had never been repealed.

Section 207 would clarify provisions in the OECD Agreement, consistent with representations made by the United States Trade Representative, that nothing in the OECD Agreement affects the Jones Act or other U.S. cabotage laws.

Section 208 would clarify that nothing in the OECD Agreement should be construed as preventing the United States from taking action which it considers necessary for the protection of its essential security interests. This section would allow the United States to invoke its sovereign authority to define, for the purposes of exclusion from the OECD Agreement, the terms "military vessel", "military reserve vessel", or "essential security interests" on a case by case basis, as determined by the Secretary of Defense. The committee believes that the only way to safeguard our military pro-

grams is to establish in advance our sovereign prerogative to invoke what amounts to a national security exemption against trade-related actions which might have some detrimental effect upon sea-lift or other military vessel programs.

Section 209 would define various terms associated with the OECD Agreement.

DEPARTMENTAL DATA

The Committee on National Security received correspondence from the Department of Defense and from the United States Trade Representative concerning H.R. 2754:

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, May 29, 1996.

Hon. FLOYD D. SPENCE,
Chairman, Committee on National Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on H.R. 2754, 104th Congress, a bill "To approve and implement the OECD Shipbuilding Trade Agreement." This bill was reported out by the House Ways and Means Committee on March 21 and was referred to the National Security Committee for review of its merchant marine provisions. The Administration supports the enactment of this legislation.

This Administration has been actively pursuing initiatives to revitalize and enhance the competitiveness of our shipbuilding industry. The OECD Shipbuilding Agreement, one of the five elements of the President's plan, is intended to eliminate foreign commercial shipbuilding subsidies and other trade distorting practices and to allow U.S. shipbuilders to compete on equal terms with foreign shipbuilders. The agreement should have a positive long term impact by creating new commercial opportunities for those defense-oriented companies that are willing and able to compete in the international commercial shipbuilding market. Capturing a share of the world market will help sustain the viability of this important industrial base for the Navy's future and benefit the Navy by reducing construction costs.

The Agreement will not adversely effect our national security. It specifically excludes military logistical vessels and any features which may be added to vessels that have military use. We do not believe the Agreement will obstruct any existing or future Department of Defense programs. It does not change cabotage laws, that clearly are vital to our national security.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

JUDITH A. MILLER,
The United States Trade Representative.

EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, DC, April 12, 1996.

Hon. FLOYD D. SPENCE,
Chairman, Committee on National Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I wish to bring your attention to an important and urgent matter now before the National Security Committee. Legislation to implement the OECD Shipbuilding Agreement, H.R. 2754, was reported by the House Committee on Ways and Means on March 21 by a wide margin. It will now be referred to your Committee for review of its maritime provisions. The Administration strongly supports the prompt enactment of H.R. 2754, which has bipartisan sponsorship led by Congressmen Philip Crane (R-IL) and Sam Gibbons (D-FL), and would urge your favorable consideration of this bill.

The Shipbuilding Agreement, which was signed by the United States in December 1994, is designed to eliminate large foreign subsidies for shipbuilding and to provide, for the first time, a mechanism to address the dumping of ships. These disciplines will level the playing field for U.S. shipbuilders, enabling them to compete effectively in the huge international ship construction market. This will provide new sales and employment opportunities which will strengthen the American commercial shipbuilding industry and, thus, have a positive impact on our defense shipbuilding industrial base as well.

The Agreement was scheduled to enter into force on January 1, 1996, subsequent to its ratification by all Parties to it. This did not occur because the United States and Japan failed to complete their respective ratification processes last year. The other Parties to the Agreement (the European Union, Korea and Norway) formally ratified it on December 12, 1995. The Government of Japan has indicated that its delay was purely procedural and expects to complete its process within the first half of this year. Consequently, the Parties to the Agreement agreed to extend the ratification date to June 15, 1996, and entry into force to July 15, 1996.

It is extremely important that the United States meet this new ratification deadline. Several European Union States—France, Germany, Greece and Spain—are presently encountering considerable social pressure to introduce new shipbuilding subsidies. We fear that if the Agreement is not ratified by the United States in time to meet the June 15 deadline, there is a high probability the Agreement will unravel. If this occurs, the chance for establishing strong disciplines in the commercial shipbuilding sector and enabling our shipbuilders to compete on a level playing field will be lost. Moreover, such an outcome will reflect poorly on the credibility of the United States, which was the initiator and driving force behind these negotiations.

I have enclosed a brief fact sheet which addresses a number of the points made in a March 18 "Dear Colleague" letter, which appears to be based on a misunderstanding of the provisions of the Agreement and, in some cases, on inaccurate press reports. This letter, which was sent to all Members, asserts that the Agreement will harm U.S. interests and urges Members to oppose H.R. 2754.

I believe the OECD Shipbuilding Agreement is balanced and that renegotiation of it is not a viable option. In fact, I think it is clear that we paid a modest price to obtain major foreign concessions to end distortive commercial shipbuilding practices. In order to meet the June 15 ratification deadline, it is essential that H.R. 2754 be enacted as quickly as possible. Again, I urge your favorable consideration of this bill.

Sincerely,

MICHAEL KANTOR.

OECD SHIPBUILDING AGREEMENT FACT SHEET

The following addresses a number of concerns expressed in a March 18 "Dear Colleague" letter in opposition to H.R. 2754, "The OECD Shipbuilding Agreement"

With few exceptions, the Agreement eliminates foreign subsidy programs as of its entry into force. It does not allow billions of dollars of subsidies to continue until January 1, 1999 or permit billions of dollars to be granted for new subsidy programs.

The only permanent exemptions to the prohibition on subsidies are for limited government assistance to research and development and for worker retirement, severance and retraining associated with the downsizing of shipyards.

Certain restructuring programs of Portugal, Spain and Belgium are allowed to continue for limited periods after entry into force of the Agreement. These programs were already in operation prior to conclusion of the negotiations. Expenditures are limited to the amounts and purposes described in the Agreement, and are primarily intended to address the social costs of production capacity reduction. Only \$85 million of Spanish assistance may be earmarked for shipyard investments after entry into force of the Agreement.

There are no special exemptions for France or Germany or any other countries. All assistance provided must be in accordance with the Agreement.

While Title XI finance guarantee program must be brought into conformance with the Agreement, this is a small price to pay for the elimination of large foreign direct subsidy programs.

A large part of its current effectiveness is due to the Agreement's "standstill" provision.

The financing provision is one of the four key aspects of the Agreement; it is virtually certain the Agreement will unravel if the U.S. refuses to implement one of its key elements.

It is unrealistic to believe Title XI will remain an effective promotional tool if the Agreement is not implemented; other countries will move quickly to match or exceed its terms to remain competitive.

In his October 1, 1993 announcement to Congress of his "five point program," to strengthen America's shipyards, including the enhanced Title XI program, President Clinton stated that if multi-lateral agreement were reached ". . . any conditions of the Title XI loan guarantee program that were inconsistent with the agreement would have to be modified or eliminated."

The Jones Act home build requirement is permanently exempted from the Agreement

Other countries, however, must eliminate their “home build” requirements, which are widely perceived as trade distortive. Our negotiating partners were persuaded to agree to this exception because Jones Act construction is quite small relative to total global commercial shipbuilding volume; the Agreement does, however, provide a mechanism to deal with their concerns that a major increase in Jones Act construction might undermine the balance of rights and obligations in the Agreement.

It is extremely unlikely that U.S. shipbuilders would deliver Jones Act vessels exceeding 200,000 gross tons per year. A recent Department of Transportation survey shows that the total cumulative U.S. vessel order book (Jones Act and other) amounted to only 191,500 gross tons at the end of 1995, which will be delivered over a multi-year period.

Even in the unlikely case that Jones Act construction became extremely active, such activity would not place the United States in violation of the Agreement, since the coastwise laws are exempted from the Agreement. There would be no obligation to change the Jones Act.

These negotiations were initiated at the request of U.S. industry—including the large defense-oriented shipbuilding yards.

Industry throughout these negotiations made a strong case that strict disciplines on foreign subsidies were necessary to allow them entry into the international commercial market.

These negotiations were strongly supported by Congress.

There have been hearings in the Trade Subcommittee of the House Committee on Ways and Means on March 21, 1991 and July 1, 1993; by the Merchant Marine Subcommittee of the House

Committee on Merchant Marine and Fisheries on February 19, 1992, and June 30, 1993; and by the Trade Subcommittee of the Senate Finance Committee on August 2, 1991, and November 18, 1993. At these hearings, Congress showed support for the OECD shipbuilding negotiations.

Several pieces of legislation were introduced in both chambers of Congress during the 102nd and 103rd Sessions of Congress that would have imposed sanctions on subsidized ships entering U.S. waters unless their countries entered into an agreement with the U.S. to eliminate subsidies to their shipbuilding industries. These bills were aimed at encouraging foreign governments to conclude the OECD shipbuilding negotiations.

One of these bills, H.R. 2056 was passed by the House of Representatives on May 13, 1992.

COMMITTEE POSITION

On May 29, 1996, the Committee on National Security, a quorum being present, approved H.R. 2754, as amended, by voice vote.

FISCAL DATA

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the committee attempted to ascertain annual outlays resulting from the bill during fiscal year 1997 and the four following fiscal years. The results of such efforts are reflected in the cost estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974, which is included in this report pursuant to clause 2(l)(3)(C) of House Rule XI.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 403(a) of the Congressional Budget Act of 1974 is as follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 30, 1996.

Hon. FLOYD SPENCE,
Chairman, Committee on National Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2754, the Shipbuilding Trade Agreement Act, as amended and ordered reported by the Committee on National Security on May 29, 1996. CBO and JCT estimate that H.R. 2754 would decrease governmental receipts by \$2 million in fiscal year 1996 and increase governmental receipts by \$15 million over fiscal years 1996–2002. H.R. 2754 contains no private sector or intergovernmental mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

The OECD Shipbuilding Trade Agreement was signed on December 21, 1994, by the following countries: The Commission of the European Communities including the United Kingdom, Germany, France, Italy, Spain, Ireland, the Netherlands, Belgium, Luxembourg, Greece, Portugal, Denmark, Austria, Sweden and Finland; Japan; South Korea; Norway; and the United States. Under current law (19 USC 1466), US flag vessels are subject to a 50 percent ad valorem duty on the cost of equipment and non-emergency repairs obtained in foreign countries. As mandated by the OECD agreement, section 201 of the proposed legislation would partially repeal the duty by exempting repairs to US flag vessels done in OECD signatory countries.

CBO estimates that section 201 of the bill, pertaining to vessel repair duties, would decrease governmental receipts by \$2 million in fiscal year 1996 and by \$50 million over the fiscal years 1996–2002, net of payroll and income tax offsets. The estimate of revenue loss is based on the historical collections. Over the past several years, collections have been between \$15 million and \$25 million annually. According to the US Maritime Administration (MARAD), in December 1995 there were 141 vessels in the US flag fleet. However, MARAD predicts a steady decline in the size of the US fleet due to the impending expiration and expected termination of the

operating-differential subsidy program, through which payments are made to US vessels on specified trade routes. This estimate assumes that future collections of the vessel repair duty would decline as a result of this reduction in the size of the fleet.

Currently about half of all repairs on US vessels in foreign ports are performed in OECD signatory countries. If section 201 of the bill is enacted, CBO assumes that additional US vessel repairs would be diverted to ports in OECD countries to take advantage of the duty-free repair treatment. This estimate assumes that this provision will be effective on July 15, 1996.

Section 301 of the bill expands penalties for failure to satisfy the filing requirements for claiming the exemption from US tax that is available to certain foreign persons with respect to income from international operation of ships. The Joint Committee on Taxation estimates that this provision would increase governmental receipts by \$3 million in fiscal year 1997 and by \$65 million over fiscal years 1996–2002. CBO concurs with this estimate.

REVENUE EFFECTS OF H.R. 2754

[By fiscal year, in billions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Projected revenues under current law ¹	1,417.583	1,475.572	1,547.285	1,619.979	1,699.866	1,789.771	1,882.950
Proposed changes:							
Section 201	–0.002	–0.010	–0.012	–0.007	–0.004	–0.009	–0.006
Section 301	0.000	0.003	0.006	0.012	0.015	0.015	0.014
Total	–0.002	–0.007	–0.006	0.005	0.011	0.006	0.008
Projected revenues under H.R. 2754	1,417.581	1,475.565	1,547.279	1,619.984	1,699.877	1,789.777	1,882.958

¹ Includes the revenue effects of P.L. 104–7 (H.R. 831), P.L. 104–104 (S. 652), P.L. 104–117 (H.R. 2778), P.L. 104–121 (H.R. 3136), P.L. 104–132 (S. 735), and P.L. 104–134 (H.R. 3019).

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because this bill would affect receipts, pay-as-you-go procedures would apply.

These effects are summarized in the table below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1996	1997	1998
Changes in Receipts	–2	–7	–6
Changes in Outlays	(¹)	(¹)	(¹)

¹ Not applicable.

If you would like further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director*.

COMMITTEE COST ESTIMATE

Pursuant to clause 7(a) of Rule XIII of the Rules of the House of Representatives, the committee generally concurs with the estimate as contained in the report of the Congressional Budget Office.

INFLATION IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee concludes that the bill would have no significant inflationary impact.

OVERSIGHT FINDINGS

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, this legislation results from hearings and other oversight activities conducted by the committee pursuant to clause 2(b)(1) of rule X.

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures. The bill does, however, authorize appropriations. Other fiscal features of this legislation are addressed in the estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Reform and Oversight pertaining to the subject matter of H.R. 2754.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104-4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

ROLL CALL VOTE

In accordance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, roll call and voice votes were taken with respect to the committee's consideration of H.R. 2754. The record of the roll call vote is attached to this report.

The committee ordered H.R. 2754 reported to the House with a favorable recommendation by a voice vote, a quorum being present.

**COMMITTEE ON NATIONAL SECURITY
104TH CONGRESS
ROLL CALL**

Amendment Number:**Date: 05/29/96****Title XI Loan****Offered By: Mr. Taylor****Voice Vote Ayes Nays**

Rep.	Aye	Nay	Present	Rep.	Aye	Nay	Present
Mr. Spence		X		Mr. Dellums		X	
Mr. Stump		X		Mr. Montgomery	X		
Mr. Hunter	X			Mrs. Schroeder			
Mr. Kasich				Mr. Skelton		X	
Mr. Bateman		X		Mr. Sisisky		X	
Mr. Hansen				Mr. Spratt		X	
Mr. Weldon		X		Mr. Ortiz	X		
Mr. Dornan	X			Mr. Pickett		X	
Mr. Hefley		X		Mr. Evans	X		
Mr. Saxton				Mr. Tanner	X		
Mr. Cunningham	X			Mr. Browder			
Mr. Buyer		X		Mr. Taylor	X		
Mr. Torkildsen		X		Mr. Abercrombie			
Mrs. Fowler		X		Mr. Edwards		X	
Mr. McHugh		X		Mr. Tejeda	X		
Mr. Talent		X		Mr. Meehan			
Mr. Everett		X		Mr. Underwood			
Mr. Bartlett	X			Ms. Harman		X	
Mr. McKeon		X		Mr. McHale	X		
Mr. Lewis	X			Mr. Geren	X		
Mr. Watts	X			Mr. Peterson			
Mr. Thornberry		X		Mr. Jefferson			
Mr. Hostettler		X		Ms. DeLauro		X	
Mr. Chambliss	X			Mr. Ward		X	
Mr. Hilleary				Mr. Kennedy		X	
Mr. Scarborough		X					
Mr. Jones	X						
Mr. Longley	X						
Mr. Tiahrt							
Mr. Hastings		X					

Roll Call Vote Total 17 Aye 26 Nay Present

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * *

Part II—Report, Entry, and Unlading of Vessels and Vehicles

* * * * *

SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS

(a) * * *

* * * * *

(i) *The duty imposed by subsection (a) shall not apply with respect to activities occurring in a Shipbuilding Agreement Party, as defined in section 861(22), with respect to—*

(1) *self-propelled seagoing vessels of 100 gross tons or more that are used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredges), and*

(2) *tugs of 365 kilowatts or more.*

A vessel shall be considered “self-propelled seagoing” if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

* * * * *

SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.

(a) *IN GENERAL.—Notwithstanding any other provision of law, upon receiving from the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.*

(b) *EXCEPTIONS.—Subsection (a) shall not be applied to deny a permit for the following:*

(1) *To unlade any United States citizen or permanent legal resident alien from a vessel included in the list described in subsection (a), or to unlade any refugee or any alien who would otherwise be eligible to apply for asylum and withholding of deportation under the Immigration and Nationality Act.*

(2) *To lade or unlade any crewmember of such vessel.*

(3) *To lade or unlade coal and other fuel supplies (for the operation of the listed vessel), ships’ stores, sea stores, and the legitimate equipment of such vessel.*

(4) *To lade or unlade supplies for the use or sale on such vessel.*

(5) *To lade or unlade such other merchandise, baggage, or passenger as the Customs Service shall determine necessary to protect the immediate health, safety, or welfare of a human being.*

(c) **CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.—**

(1) **PETITION FOR CORRECTION.**—*If the master of any vessel whose application for a permit to lade or unlade has been denied under this section believes that such denial resulted from a ministerial or clerical error, not amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.*

(2) **INAPPLICABILITY OF SECTIONS 514 AND 520.**—*Notwithstanding paragraph (1), imposition of countermeasures under this section shall not be deemed an exclusion or other protestable decision under section 514, and shall not be subject to correction under section 520.*

(3) **PETITIONS SEEKING ADMINISTRATIVE REVIEW.**—*Any petition seeking administrative review of any matter regarding the Secretary of Commerce's decision to list a vessel under section 807 must be brought under that section.*

(d) **PENALTIES.**—*In addition to any other provision of law, the Customs Service may impose a civil penalty of not to exceed \$10,000 against the master of any vessel—*

(1) *who submits false information in requesting any permit to lade or unlade; or*

(2) *who attempts to, or actually does, lade or unlade in violation of any denial of such permit under this section.*

* * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * *

SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTER-MEASURE PROCEEDINGS.

(a) **REVIEW OF DETERMINATION.**—

(1) **IN GENERAL.**—*Within 30 days after the date of publication in the Federal Register of—*

(A)(i) *a determination by the administering authority under section 802(c) not to initiate an investigation,*

(ii) *a negative determination by the Commission under section 803(a) as to whether there is or has been reasonable indication of material injury, threat of material injury, or material retardation,*

(iii) *a determination by the administering authority to suspend or revoke an injurious pricing order under section 806(d) or (e),*

(iv) *a determination by the administering authority under section 807(c),*

(v) *a determination by the administering authority in a review under section 807(d),*

(vi) a determination by the administering authority concerning whether to extend the scope or duration of a countermeasure order under section 807(e)(3)(B)(ii),

(vii) a determination by the administering authority to amend a countermeasure order under section 807(e)(6),

(viii) a determination by the administering authority in a review under section 807(g),

(ix) a determination by the administering authority under section 807(i) to terminate proceedings, or to amend or revoke a countermeasure order,

(x) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(D) of that section, or

(B)(i) an injurious pricing order based on a determination described in subparagraph (A) of paragraph (2),

(ii) notice of a determination described in subparagraph (B) of paragraph (2),

(iii) notice of implementation of a determination described in subparagraph (C) of paragraph (2), or

(iv) notice of revocation of an injurious pricing order based on a determination described in subparagraph (D) of paragraph (2),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) *REVIEWABLE DETERMINATIONS.*—The determinations referred to in paragraph (1)(B) are—

(A) a final affirmative determination by the administering authority or by the Commission under section 805, including any negative part of such a determination (other than a part referred to in subparagraph (B)),

(B) a final negative determination by the administering authority or the Commission under section 805,

(C) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(A) of that section, and

(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

(3) *EXCEPTION.*—Notwithstanding the 30-day limitation imposed by paragraph (1) with regard to an order described in paragraph (1)(B)(i), a final affirmative determination by the administering authority under section 805 may be contested by commencing an action, in accordance with the provisions of paragraph (1), within 30 days after the date of publication in the Federal Register of a final negative determination by the Commission under section 805.

(4) *PROCEDURES AND FEES.*—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

(b) *STANDARDS OF REVIEW.*—(1) *REMEDY.*—*The court shall hold unlawful any determination, finding, or conclusion found—*(A) *in an action brought under subparagraph (A) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or*(B) *in an action brought under subparagraph (B) of subsection (a)(1), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.*(2) *RECORD FOR REVIEW.*—(A) *IN GENERAL.*—*For purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—*(i) *a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 843(a)(2); and*(ii) *a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.*(B) *CONFIDENTIAL OR PRIVILEGED MATERIAL.*—*The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.*(c) *STANDING.*—*Any interested party who was a party to the proceeding under title VIII shall have the right to appear and be heard as a party in interest before the United States Court of International Trade in an action under this section. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, and within the time prescribed by rules of the court.*(d) *DEFINITIONS.*—*For purposes of this section:*(1) *ADMINISTERING AUTHORITY.*—*The term “administering authority” has the meaning given that term in section 861(1).*(2) *COMMISSION.*—*The term “Commission” means the United States International Trade Commission.*(3) *INTERESTED PARTY.*—*The term “interested party” means any person described in section 861(17).*

* * * * *

**TITLE VIII—INJURIOUS PRICING AND
COUNTERMEASURES RELATING TO
SHIPBUILDING***Subtitle A—Injurious Pricing Charge and Countermeasures**Sec. 801. Injurious pricing charge.**Sec. 802. Procedures for initiating an injurious pricing investigation.*

Sec. 803. *Preliminary determinations.*
 Sec. 804. *Termination or suspension of investigation.*
 Sec. 805. *Final determinations.*
 Sec. 806. *Imposition and collection of injurious pricing charge.*
 Sec. 807. *Imposition of countermeasures.*
 Sec. 808. *Injurious pricing petitions by third countries.*
 Sec. 809. *Third country sales.*

Subtitle B—Special Rules

Sec. 821. *Export price.*
 Sec. 822. *Normal value.*
 Sec. 823. *Currency conversion.*

Subtitle C—Procedures

Sec. 841. *Hearings.*
 Sec. 842. *Determinations on the basis of the facts available.*
 Sec. 843. *Access to information.*
 Sec. 844. *Conduct of investigations.*
 Sec. 845. *Administrative action following shipbuilding agreement panel reports.*

Subtitle D—Definitions

Sec. 861. *Definitions.*

Subtitle A—Injurious Pricing Charge and Countermeasures

SEC. 801. INJURIOUS PRICING CHARGE.

(a) BASIS FOR CHARGE.—If—

(1) the administering authority determines that a foreign vessel has been sold directly or indirectly to one or more United States buyers at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is or has been materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of such vessel, then there shall be imposed upon the foreign producer of the subject vessel an injurious pricing charge, in an amount equal to the amount by which the normal value exceeds the export price for the vessel. For purposes of this subsection and section 805(b)(1), a reference to the sale of a foreign vessel includes the creation or transfer of an ownership interest in the vessel, except for an ownership interest created or acquired solely for the purpose of providing security for a normal commercial loan.

(b) FOREIGN VESSELS NOT MERCHANDISE.—*No foreign vessel may be considered to be, or to be part of, a class or kind of merchandise for purposes of subtitle B of title VII.*

SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS PRICING INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) GENERAL RULE.—*Except in the case in which subsection (d)(6) applies, an injurious pricing investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for*

the imposition of a charge under section 801(a) exist, and whether a producer described in section 861(17)(C) would meet the criteria of subsection (b)(1)(B) for a petitioner.

(2) TIME FOR INITIATION BY ADMINISTERING AUTHORITY.—An investigation may only be initiated under paragraph (1) within 6 months after the time the administering authority first knew or should have known of the sale of the vessel. Any period in which subsection (d)(6)(A) applies shall not be included in calculating that 6-month period.

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—(A) Except in a case in which subsection (d)(6) applies, an injurious pricing proceeding shall be initiated whenever an interested party, as defined in subparagraph (C), (D), (E), or (F) of section 861(17), files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subparagraph (B), (C), (D), or (E) of this paragraph, and which is accompanied by information reasonably available to the petitioner supporting those allegations and identifying the transaction concerned.

(B)(i) If the petitioner is a producer described in section 861(17)(C), and—

(I) if the petitioner was invited to tender a bid on the contract at issue, the petition shall include information indicating that the petitioner actually did so and the bid of the petitioner substantially met the delivery date and technical requirements of the bid, or

(II) if the petitioner was not invited to tender a bid, the petition shall include information indicating that the petitioner was capable of building the vessel concerned and, if the petitioner knew or should have known of the proposed purchase, it made demonstrable efforts to conclude a sale with the United States buyer consistent with the delivery date and technical requirements of the buyer.

(ii) For purposes of clause (i)(II), there is a rebuttable presumption that the petitioner knew or should have known of the proposed purchase if it is demonstrated that—

(I) the majority of the producers in the industry have made efforts with the United States buyer to conclude a sale of the subject vessel, or

(II) general information on the sale was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the petitioner had regular contacts or dealings.

(C) If the petitioner is an interested party described in section 861(17)(D), the petition shall include information indicating that members of the union or group of workers described in that section are employed by a producer that meets the requirements of subparagraph (B) of this paragraph.

(D) If the petitioner is an interested party described in section 861(17)(E), the petition shall include information indicating that a member of the association described in that section is a

producer that meets the requirements of subparagraph (B) of this paragraph.

(E) If the petitioner is an interested party described in section 861(17)(F), the petition shall include information indicating that a member of the association described in that section meets the requirements of subparagraph (C) or (D) of this paragraph.

(F) The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) *SIMULTANEOUS FILING WITH COMMISSION.*—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) *DEADLINE FOR FILING PETITION.*—

(A) *DEADLINE.*—(i) A petitioner to which paragraph (1)(B)(i)(I) applies shall file the petition no later than the earlier of—

(I) 6 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or

(II) 6 months after delivery of the subject vessel.

(ii) A petitioner to which paragraph (1)(B)(i)(II) applies shall—

(I) file the petition no later than the earlier of 9 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or 6 months after delivery of the subject vessel, and

(II) submit to the administering authority a notice of intent to file a petition no later than 6 months after the time that the petitioner first knew or should have known of the sale (unless the petition itself is filed within that 6-month period).

(B) *PRESUMPTION OF KNOWLEDGE.*—For purposes of this paragraph, if the existence of the sale, together with general information concerning the vessel, is published in the international trade press, there is a rebuttable presumption that the petitioner knew or should have known of the sale of the vessel from the date of that publication.

(c) *ACTIONS BEFORE INITIATING INVESTIGATIONS.*—

(1) *NOTIFICATION OF GOVERNMENTS.*—Before initiating an investigation under either subsection (a) or (b), the administering authority shall notify the government of the exporting country of the investigation. In the case of the initiation of an investigation under subsection (b), such notification shall include a public version of the petition.

(2) *ACCEPTANCE OF COMMUNICATIONS.*—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 861(17)(C), (D), (E), or (F) before the administering authority makes its decision whether to initiate an investigation pursuant to a petition, except for inquiries regarding the status of the administering authority's consideration of the petition or a request for consultation by the government of the exporting country.

(3) *NONDISCLOSURE OF CERTAIN INFORMATION.*—*The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under subsection (b)(1).*

(d) *PETITION DETERMINATION.*—

(1) *TIME FOR INITIAL DETERMINATION.*—(A) *Within 45 days after the date on which a petition is filed under subsection (b), the administering authority shall, after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition—*

(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegations; and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) *Any period in which paragraph (6)(A) applies shall not be included in calculating the 45-day period described in subparagraph (A).*

(2) *AFFIRMATIVE DETERMINATIONS.*—*If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the vessel was sold at less than fair value, unless paragraph (6) applies.*

(3) *NEGATIVE DETERMINATIONS.*—*If—*

(A) the determination under clause (i) or (ii) of paragraph (1)(A) is negative, or

(B) paragraph (6)(B) applies,

the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) *DETERMINATION OF INDUSTRY SUPPORT.*—

(A) *GENERAL RULE.*—*For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the domestic industry, if—*

(i) the domestic producers or workers who support the petition collectively account for at least 25 percent of the total capacity of domestic producers capable of producing a like vessel, and

(ii) the domestic producers or workers who support the petition collectively account for more than 50 percent of the total capacity to produce a like vessel of that portion of the domestic industry expressing support for or opposition to the petition.

(B) *CERTAIN POSITIONS DISREGARDED.*—*In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to the foreign producer or United States buyer of the subject vessel, or the domestic producer is itself the United States buyer, unless such domestic producers demonstrate that their interests as domestic producers would be ad-*

versely affected by the imposition of an injurious pricing charge.

(C) *POLLING THE INDUSTRY.*—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total capacity to produce a like vessel—

(i) the administering authority shall poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(D) *COMMENTS BY INTERESTED PARTIES.*—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 861(17) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) *DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.*—For purposes of this subsection, the term “domestic producers or workers” means interested parties as defined in section 861(17)(C), (D), (E), or (F).

(6) *PROCEEDINGS BY WTO MEMBERS.*—The administering authority shall not initiate an investigation under this section if, with respect to the vessel sale at issue, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party—

(A) has been initiated and has been pending for not more than one year, or

(B) has been completed and resulted in the imposition of antidumping measures or a negative determination with respect to whether the sale was at less than fair value or with respect to injury.

(e) *NOTIFICATION TO COMMISSION OF DETERMINATION.*—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (d), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

SEC. 803. PRELIMINARY DETERMINATIONS.

(a) *DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.*—

(1) *GENERAL RULE.*—Except in the case of a petition dismissed by the administering authority under section 802(d)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) *an industry in the United States—*

(i) *is or has been materially injured, or*

(ii) *is threatened with material injury, or*

(B) *the establishment of an industry in the United States is or has been materially retarded,*

by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

(2) *TIME FOR COMMISSION DETERMINATION.*—The Commission shall make the determination described in paragraph (1) within 90 days after the date on which the petition is filed or, in the case of an investigation initiated under section 802(a), within 90 days after the date on which the Commission receives notice from the administering authority that the investigation has been initiated.

(b) *PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.*—

(1) *PERIOD OF INJURIOUS PRICING INVESTIGATION.*—(A) *The administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the subject vessel was sold at less than fair value.*

(B) *If cost data is required to determine normal value on the basis of a sale of a foreign like vessel that has not been delivered on or before the date on which the administering authority initiates the investigation, the administering authority shall make its determination within 160 days after the date of delivery of the foreign like vessel.*

(C) *If normal value is to be determined on the basis of constructed value, the administering authority shall make its determination within 160 days after the date of delivery of the subject vessel.*

(D) *In cases in which subparagraph (B) or (C) does not apply, the administering authority shall make its determination within 160 days after the date on which the administering authority initiates the investigation under section 802.*

(E) *In no event shall the administering authority make its determination before an affirmative determination is made by the Commission under subsection (a).*

(2) *DE MINIMIS INJURIOUS PRICING MARGIN.*—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis. For purposes of the preceding sentence, an injurious pricing margin is de minimis if the administering authority determines that the margin is less than 2 percent of the export price.

(c) *EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES OR FOR GOOD CAUSE.*—

(1) *IN GENERAL.—If—*

(A) *the administering authority concludes that the parties concerned are cooperating and determines that—*

(i) *the case is extraordinarily complicated by reason of—*

(I) *the novelty of the issues presented, or*

(II) *the nature and extent of the information required, and*

(ii) *additional time is necessary to make the preliminary determination, or*

(B) *a party to the investigation requests an extension and demonstrates good cause for the extension, then the administering authority may postpone the time for making its preliminary determination.*

(2) *LENGTH OF POSTPONEMENT.—The preliminary determination may be postponed under paragraph (1)(A) or (B) until not later than the 190th day after—*

(A) *the date of delivery of the foreign like vessel, if subsection (b)(1)(B) applies,*

(B) *the date of delivery of the subject vessel, if subsection (b)(1)(C) applies, or*

(C) *the date on which the administering authority initiates an investigation under section 802, in a case in which subsection (b)(1)(D) applies.*

(3) *NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.*

(d) *EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority shall—*

(1) *determine an estimated injurious pricing margin, and*

(2) *make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.*

(e) *NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection*

(a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) **TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner.

(2) **LIMITATION ON TERMINATION BY COMMISSION.**—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 803(b).

(b) **TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.**—The administering authority may terminate any investigation initiated by the administering authority under section 802(a) after providing notice of such termination to all parties to the investigation.

(c) **ALTERNATE EQUIVALENT REMEDY.**—The criteria set forth in subparagraphs (A) through (D) of section 806(e)(1) shall apply to any agreement that forms the basis for termination of an investigation under subsection (a) or (b).

(d) **PROCEEDINGS BY WTO MEMBERS.**—

(1) **SUSPENSION OF INVESTIGATION.**—The administering authority and the Commission shall suspend an investigation under this section if a WTO member that is not a Shipbuilding Agreement Party initiates an antidumping proceeding described in section 861(29)(A) with respect to the sale of the subject vessel.

(2) **TERMINATION OF INVESTIGATION.**—If an antidumping proceeding described in paragraph (1) is concluded by—

(A) the imposition of antidumping measures, or

(B) a negative determination with respect to whether the sale is at less than fair value or with respect to injury, the administering authority and the Commission shall terminate the investigation under this section.

(3) **CONTINUATION OF INVESTIGATION.**—(A) If such a proceeding—

(i) is concluded by a result other than a result described in paragraph (2), or

(ii) is not concluded within one year from the date of the initiation of the proceeding, then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

(B) Notwithstanding subparagraph (A)(ii), if the proceeding is concluded by a result described in paragraph (2)(A), the administering authority and the Commission shall terminate the investigation under this section.

SEC. 805. FINAL DETERMINATIONS.**(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—**

(1) *IN GENERAL.*—Within 75 days after the date of its preliminary determination under section 803(b), the administering authority shall make a final determination of whether the vessel which is the subject of the investigation has been sold in the United States at less than its fair value.

(2) *EXTENSION OF PERIOD FOR DETERMINATION.*—(A) The administering authority may postpone making the final determination under paragraph (1) until not later than 290 days after—

- (i) the date of delivery of the foreign like vessel, in an investigation to which section 803(b)(1)(B) applies,
- (ii) the date of delivery of the subject vessel, in an investigation to which section 803(b)(1)(C) applies, or
- (iii) the date on which the administering authority initiates the investigation under section 802, in an investigation to which section 803(b)(1)(D) applies.

(B) The administering authority may apply subparagraph (A) if a request in writing is made by—

- (i) the producer of the subject vessel, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was affirmative, or
- (ii) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was negative.

(3) *DE MINIMIS INJURIOUS PRICING MARGIN.*—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis as defined in section 803(b)(2).

(b) FINAL DETERMINATION BY COMMISSION.—

(1) *IN GENERAL.*—The Commission shall make a final determination of whether—

- (A) an industry in the United States—
 - (i) is or has been materially injured, or
 - (ii) is threatened with material injury, or
- (B) the establishment of an industry in the United States

is or has been materially retarded, by reason of the sale of the vessel with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) *PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.*—If the preliminary determination by the administering authority under section 803(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

- (A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 803(b), or
- (B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) *PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.*—If the preliminary determination by the administering authority under section 803(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(c) *EFFECT OF FINAL DETERMINATIONS.*—

(1) *EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.*—If the determination of the administering authority under subsection (a) is affirmative, then the administering authority shall—

(A) make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) calculate an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel.

(2) *ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.*—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an injurious pricing order under section 806. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination.

(d) *PUBLICATION OF NOTICE OF DETERMINATIONS.*—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) *CORRECTION OF MINISTERIAL ERRORS.*—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS PRICING CHARGE.

(a) *IN GENERAL.*—Within 10 days after being notified by the Commission of an affirmative determination under section 805(b), the administering authority shall publish an order imposing an injurious pricing charge on the foreign producer of the subject vessel which—

(1) directs the foreign producer of the subject vessel to pay to the Secretary of the Treasury, or the designee of the Secretary, within 180 days from the date of publication of the order, an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel,

(2) includes the identity and location of the foreign producer and a description of the subject vessel, in such detail as the administering authority deems necessary, and

(3) informs the foreign producer that—

(A) failure to pay the injurious pricing charge in a timely fashion may result in the imposition of countermeasures with respect to that producer under section 807,

(B) payment made after the deadline described in paragraph (1) shall be subject to interest charges at the Commercial Interest Reference Rate (CIRR), and

(C) the foreign producer may request an extension of the due date for payment under subsection (b).

(b) **EXTENSION OF DUE DATE FOR PAYMENT IN EXTRAORDINARY CIRCUMSTANCES.**—

(1) **EXTENSION.**—Upon request, the administering authority may amend the order under subsection (a) to set a due date for payment or payments later than the date that is 180 days from the date of publication of the order, if the administering authority determines that full payment in 180 days would render the producer insolvent or would be incompatible with a judicially supervised reorganization. When an extended payment schedule provides for a series of partial payments, the administering authority shall specify the circumstances under which default on one or more payments will result in the imposition of countermeasures.

(2) **INTEREST CHARGES.**—If a request is granted under paragraph (1), payments made after the date that is 180 days from the publication of the order shall be subject to interest charges at the CIRR.

(c) **NOTIFICATION OF ORDER.**—The administering authority shall deliver a copy of the order requesting payment to the foreign producer of the subject vessel and to an appropriate representative of the government of the exporting country.

(d) **REVOCATION OF ORDER.**—The administering authority—

(1) may revoke an injurious pricing order if the administering authority determines that producers accounting for substantially all of the capacity to produce a domestic like vessel have expressed a lack of interest in the order, and

(2) shall revoke an injurious pricing order—

(A) if the sale of the vessel that was the subject of the injurious pricing determination is voided,

(B) if the injurious pricing charge is paid in full, including any interest accrued for late payment,

(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or

(D) if, with respect to the vessel sale that was at issue in the investigation that resulted in the injurious pricing order, an antidumping proceeding conducted by a WTO

member who is not a Shipbuilding Agreement Party has been completed and resulted in the imposition of antidumping measures.

(e) ALTERNATIVE EQUIVALENT REMEDY.—

(1) AGREEMENT FOR ALTERNATE REMEDY.—*The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—*

(A) is at least as effective a remedy as the injurious pricing charge,

(B) is in the public interest,

(C) can be effectively monitored and enforced, and

(D) is otherwise consistent with the domestic law and international obligations of the United States.

(2) PRIOR CONSULTATIONS AND SUBMISSION OF COMMENTS.—*Before entering into an agreement under paragraph (1), the administering authority shall consult with the industry, and provide for the submission of comments by interested parties, with respect to the agreement.*

(3) MATERIAL VIOLATIONS OF AGREEMENT.—*If the injurious pricing order has been suspended under paragraph (1), and the administering authority determines that the foreign producer concerned has materially violated the terms of the agreement under paragraph (1), the administering authority shall terminate the suspension.*

SEC. 807. IMPOSITION OF COUNTERMEASURES.

(a) GENERAL RULE.—

(1) ISSUANCE OF ORDER IMPOSING COUNTERMEASURES.—*Unless an injurious pricing order is revoked or suspended under section 806 (d) or (e), the administering authority shall issue an order imposing countermeasures.*

(2) CONTENTS OF ORDER.—*The countermeasure order shall—*

(A) state that, as provided in section 468, a permit to lade or unlade passengers or merchandise may not be issued with respect to vessels contracted to be built by the foreign producer of the vessel with respect to which an injurious pricing order was issued under section 806, and

(B) specify the scope and duration of the prohibition on the issuance of a permit to lade or unlade passengers or merchandise.

(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

(1) GENERAL RULE.—*The administering authority shall issue a notice of intent to impose countermeasures not later than 30 days before the expiration of the time for payment specified in the injurious pricing order (or extended payment provided for under section 806(b)), and shall publish the notice in the Federal Register within 7 days after issuing the notice.*

(2) ELEMENTS OF THE NOTICE OF INTENT.—*The notice of intent shall contain at least the following elements:*

(A) SCOPE.—A permit to lade or unlade passengers or merchandise may not be issued with respect to any vessel—

(i) built by the foreign producer subject to the proposed countermeasures, and

(ii) with respect to which the material terms of sale are established within a period of 4 consecutive years beginning on the date that is 30 days after publication in the Federal Register of the notice of intent described in paragraph (1).

(B) DURATION.—For each vessel described in subparagraph (A), a permit to lade or unlade passengers or merchandise may not be issued for a period of 4 years after the date of delivery of the vessel.

(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

(1) GENERAL RULE.—The administering authority shall, within the time specified in paragraph (2), issue a determination and order imposing countermeasures.

(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

(3) CONTENT OF THE DETERMINATION.—In the determination imposing countermeasures, the administering authority shall determine whether, in light of all of the circumstances, an interested party has demonstrated that the scope or duration of the countermeasures described in subsection (b)(2) should be narrower or shorter than the scope or duration set forth in the notice of intent to impose countermeasures.

(4) ORDER.—At the same time it issues its determination, the administering authority shall issue an order imposing countermeasures, consistent with its determination.

(d) ADMINISTRATIVE REVIEW OF DETERMINATION TO IMPOSE COUNTERMEASURES.—

(1) REQUEST FOR REVIEW.—Each year, in the anniversary month of the issuance of the order imposing countermeasures under subsection (c), the administering authority shall publish in the Federal Register a notice providing that interested parties may request—

(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and

(B) a hearing in connection with such a review.

(2) REVIEW.—If a proper request has been received under paragraph (1), the administering authority shall—

(A) publish notice of initiation of a review in the Federal Register not later than 15 days after the end of the anniversary month of the issuance of the order imposing countermeasures, and

(B) review and determine whether the requesting party has demonstrated that the scope or duration of the countermeasures is excessive in light of all of the circumstances.

(3) TIME FOR REVIEW.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of the review is published. If the determination under paragraph (2)(B) is af-

firmative, the administering authority shall amend the order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service. In extraordinary circumstances, the administering authority may extend the time for its determination under paragraph (2)(B) to not later than 150 days after the date on which the notice of initiation of the review is published.

(e) EXTENSION OF COUNTERMEASURES.—

(1) REQUEST FOR EXTENSION.—Within the time described in paragraph (2), an interested party may file with the administering authority a request that the scope or duration of countermeasures be extended.

(2) DEADLINE FOR REQUEST FOR EXTENSION.—

(A) REQUEST FOR EXTENSION BEYOND 4 YEARS.—If the request seeks an extension that would cause the scope or duration of countermeasures to exceed 4 years, including any prior extensions, the request for extension under paragraph (1) shall be filed not earlier than the date that is 15 months, and not later than the date that is 12 months, before the date that marks the end of the period that specifies the vessels that fall within the scope of the order by virtue of the establishment of material terms of sale within that period.

(B) OTHER REQUESTS.—If the request seeks an extension under paragraph (1) other than one described in subparagraph (A), the request shall be filed not earlier than the date that is 6 months, and not later than a date that is 3 months, before the date that marks the end of the period referred to in subparagraph (A).

(3) DETERMINATION.—

(A) NOTICE OF REQUEST FOR EXTENSION.—If a proper request has been received under paragraph (1), the administering authority shall publish notice of initiation of an extension proceeding in the Federal Register not later than 15 days after the applicable deadline in paragraph (2) for requesting the extension.

(B) PROCEDURES.—

(i) REQUESTS FOR EXTENSION BEYOND 4 YEARS.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

(ii) OTHER REQUESTS.—If paragraph (2)(B) applies to the request, the administering authority shall determine, within 90 days after the date on which the notice of initiation of the proceeding is published, whether the requesting party has demonstrated that the scope or duration of the countermeasures is inadequate in light of all of the circumstances. If the administering authority determines that an extension is warranted, it shall amend the countermeasure order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Fed-

eral Register, and shall provide a copy of any amended order to the Customs Service.

(4) *CONSULTATION WITH TRADE REPRESENTATIVE.*—If paragraph (3)(B)(i) applies, the administering authority shall consult with the Trade Representative concerning whether it would be appropriate to request establishment of a dispute settlement panel under the Shipbuilding Agreement for the purpose of seeking authorization to extend the scope or duration of countermeasures for a period in excess of 4 years.

(5) *DECISION NOT TO REQUEST PANEL.*—If, based on consultations under paragraph (4), the Trade Representative decides not to request establishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

(6) *PANEL PROCEEDINGS.*—If, based on consultations under paragraph (4), the Trade Representative requests the establishment of a panel under the Shipbuilding Agreement to authorize an extension of the period of countermeasures, and the panel authorizes such an extension, the administering authority shall promptly amend the countermeasure order. The administering authority shall publish notice of the amendment in the Federal Register.

(f) *LIST OF VESSELS SUBJECT TO COUNTERMEASURES.*—

(1) *GENERAL RULE.*—At least once during each 12-month period beginning on the anniversary date of a determination to impose countermeasures under this section, the administering authority shall publish in the Federal Register a list of all delivered vessels subject to countermeasures under the determination.

(2) *CONTENT OF LIST.*—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

(A) The name and general description of the vessel.

(B) The vessel identification number.

(C) The shipyard where the vessel was constructed.

(D) The last-known registry of the vessel.

(E) The name and address of the last-known owner of the vessel.

(F) The delivery date of the vessel.

(G) The remaining duration of countermeasures on the vessel.

(H) Any other identifying information available.

(3) *AMENDMENT OF LIST.*—The administering authority may amend the list from time to time to reflect new information that comes to its attention and shall publish any amendments in the Federal Register.

(4) *SERVICE OF LIST AND AMENDMENTS.*—(A) The administering authority shall serve a copy of the list described in paragraph (1) on—

(i) the petitioner under section 802(b),

(ii) the United States Customs Service,

(iii) the Secretariat of the Organization for Economic Cooperation and Development,

- (iv) the owners of vessels on the list,
- (v) the shipyards on the list, and
- (vi) the government of the country in which a shipyard on the list is located.

(B) The administering authority shall serve a copy of any amendments to the list under paragraph (3) or subsection (g)(3) on—

- (i) the parties listed in clauses (i), (ii), and (iii) of subparagraph (A), and,
- (ii) if the amendment affects their interests, the parties listed in clauses (iv), (v), and (vi) of subparagraph (A).

(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

(1) REQUEST FOR REVIEW.—(A) An interested party may request in writing a review of the list described in subsection (f)(1), including any amendments thereto, to determine whether—

- (i) a vessel included in the list does not fall within the scope of the applicable countermeasure order and should be deleted, or
- (ii) a vessel not included in the list falls within the scope of the applicable countermeasure order and should be added.

(B) Any request seeking a determination described in subparagraph (A)(i) shall be made within 90 days after the date of publication of the applicable list.

(2) REVIEW.—If a proper request for review has been received, the administering authority shall—

(A) publish notice of initiation of a review in the Federal Register—

- (i) not later than 15 days after the request is received, or
- (ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and

(B) review and determine whether the requesting party has demonstrated that—

- (i) a vessel included in the list does not qualify for such inclusion, or
- (ii) a vessel not included in the list qualifies for inclusion.

(3) TIME FOR DETERMINATION.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.

(h) EXPIRATION OF COUNTERMEASURES.—Upon expiration of a countermeasure order imposed under this section, the administering authority shall promptly publish a notice of the expiration in the Federal Register.

(i) **SUSPENSION OR TERMINATION OF PROCEEDINGS OR COUNTERMEASURES; TEMPORARY REDUCTION OF COUNTERMEASURES.**—

(1) **IF INJURIOUS PRICING ORDER REVOKED OR SUSPENDED.**—

If an injurious pricing order has been revoked or suspended under section 806(d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

(2) **IF PAYMENT DATE AMENDED.**—(A) *Subject to subparagraph (C), if the payment date under an injurious pricing order is amended under section 845, the administering authority shall, as appropriate, suspend proceedings or modify deadlines under this section, or suspend or amend a countermeasure order issued with respect to that injurious pricing order.*

(B) *In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not applied before the date that is 30 days after publication in the Federal Register of the amended payment date.*

(C) **If—**

(i) *a countermeasure order is issued under subsection (c) before an amendment is made under section 845 to the payment date of the injurious pricing order to which the countermeasure order applies, and*

(ii) *the administering authority determines that the period of time between the original payment date and the amended payment date is significant for purposes of determining the appropriate scope or duration of countermeasures,*

the administering authority may, in lieu of acting under subparagraph (A), reinstitute proceedings under subsection (c) for purposes of issuing a new determination under that subsection.

(j) **COMMENT AND HEARING.**—*In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—*

(1) *shall solicit comments from interested parties, and*

(2)(A) *in a proceeding under subsection (c) or (d), upon the request of an interested party, shall hold a hearing in accordance with section 841(b) in connection with that proceeding, or*

(B) *in a proceeding under subsection (e) or (g), upon the request of an interested party, may hold a hearing in accordance with section 841(b) in connection with that proceeding.*

SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.

(a) **FILING OF PETITION.**—*The government of a Shipbuilding Agreement Party may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—*

(1) *a vessel from another Shipbuilding Agreement Party has been sold in the United States at less than fair value, and*

(2) *an industry, in the petitioning country, producing or capable of producing a like vessel is materially injured by reason of such sale.*

(b) **INITIATION.**—*The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the Parties Group under the Shipbuilding*

Agreement, shall determine whether to initiate an investigation described in subsection (a).

(c) *DETERMINATIONS.*—Upon initiation of an investigation under subsection (a), the Trade Representative shall request the following determinations be made in accordance with substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

(1) The administering authority shall determine whether the subject vessel has been sold at less than fair value.

(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of the sale of the subject vessel in the United States.

(d) *PUBLIC COMMENT.*—An opportunity for public comment shall be provided, as appropriate—

(1) by the Trade Representative, in making the determinations required by subsection (b), and

(2) by the administering authority and the Commission, in making the determinations required by subsection (c).

(e) *ISSUANCE OF ORDER.*—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall—

(1) order an injurious pricing charge in accordance with section 806, and

(2) make such determinations and take such other actions as are required by sections 806 and 807, as if affirmative determinations had been made under subsections (a) and (b) of section 805.

(f) *REVIEWS OF DETERMINATIONS.*—For purposes of review under section 516B, if an order is issued under subsection (e)—

(1) the final determinations of the administering authority and the Commission under subsection (c) shall be treated as final determinations made under section 805, and

(2) determinations of the administering authority under subsection (e)(2) shall be treated as determinations made under section 806 or 807, as the case may be.

(g) *ACCESS TO INFORMATION.*—Section 843 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

SEC. 809. THIRD COUNTRY SALES.

(a) *FILING OF PETITION.*—Any interested party that would be eligible to file a petition under section 802(b)(1) with respect to a sale if such sale had been to a United States buyer may, with respect to a sale of a vessel by a foreign producer in a Shipbuilding Agreement Party to a buyer in a third country that is a Shipbuilding Agreement Party, file with the Trade Representative a petition alleging that—

(1) such vessel has been sold at less than fair value; and

(2) the industry in the United States producing or capable of producing a like vessel is materially injured by reason of such sale.

(b) *DETERMINATION.*—Upon receipt of a petition under subsection (a), the Trade Representative shall request that the following deter-

minations be made in accordance with substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

(1) The administering authority shall determine whether there is reasonable cause to believe that the subject vessel has been sold at less than fair value.

(2) The Commission shall determine whether there is reasonable cause to believe that the industry in the United States is materially injured by reason of such sale.

(c) COMPLAINT BY TRADE REPRESENTATIVE.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (b), and the Commission makes an affirmative determination under paragraph (2) of subsection (b), the Trade Representative shall make application to the country of the buyer of the subject vessel for an injurious pricing action and relief similar to that available under section 808. The Trade Representative shall advise the petitioner of the proceedings undertaken by the third country in response to such application and shall permit the petitioner to participate in such proceedings to the greatest extent practicable.

Subtitle B—Special Rules

SEC. 821. EXPORT PRICE.

(a) EXPORT PRICE.—For purposes of this title, the term “export price” means the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated United States buyer. The term “sold (or agreed to be sold) by or for the account of the foreign producer” includes any transfer of an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a United States buyer.

(b) ADJUSTMENTS TO EXPORT PRICE.—The price used to establish export price shall be—

(1) increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject vessel, and

(2) reduced by—

(A) the amount, if any, included in such price, attributable to any additional costs, charges, or expenses which are incident to bringing the subject vessel from the shipyard in the exporting country to the place of delivery,

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject vessel, and

(C) all other expenses incidental to placing the vessel in condition for delivery to the buyer.

SEC. 822. NORMAL VALUE.

(a) DETERMINATION.—In determining under this title whether a subject vessel has been sold at less than fair value, a fair comparison shall be made between the export price and normal value of the

subject vessel. In order to achieve a fair comparison with the export price, normal value shall be determined as follows:

(1) DETERMINATION OF NORMAL VALUE.—

(A) IN GENERAL.—The normal value of the subject vessel shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price under section 821(a).

(B) PRICE.—The price referred to in subparagraph (A) is—

(i) the price at which a foreign like vessel is first sold in the exporting country, in the ordinary course of trade and, to the extent practicable, at the same level of trade, or

(ii) in a case to which subparagraph (C) applies, the price at which a foreign like vessel is so sold for consumption in a country other than the exporting country or the United States, if—

(I) such price is representative, and

(II) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price.

(C) THIRD COUNTRY SALES.—This subparagraph applies when—

(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

(ii) the particular market situation in the exporting country does not permit a proper comparison with the export price.

(D) CONTEMPORANEOUS SALE.—For purposes of subparagraph (A), “a time reasonably corresponding to the time of the sale” means within 3 months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as the administering authority determines would be appropriate.

(2) FICTITIOUS MARKETS.—No pretended sale, and no sale intended to establish a fictitious market, shall be taken into account in determining normal value.

(3) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject vessel cannot be determined under paragraph (1)(B) or (1)(C), then the normal value of the subject vessel shall be the constructed value of that vessel, as determined under subsection (e).

(4) INDIRECT SALES.—If a foreign like vessel is sold through an affiliated party, the price at which the foreign like vessel is sold by such affiliated party may be used in determining normal value.

(5) ADJUSTMENTS.—The price described in paragraph (1)(B) shall be—

(A) reduced by—

(i) the amount, if any, included in the price described in paragraph (1)(B), attributable to any costs, charges, and expenses incident to bringing the foreign like vessel

from the shipyard to the place of delivery to the purchaser,

(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

(iii) the amount of all other expenses incidental to placing the foreign like vessel in condition for delivery to the buyer, and

(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) physical differences between the subject vessel and the vessel used in determining normal value, or

(ii) other differences in the circumstances of sale.

(6) **ADJUSTMENTS FOR LEVEL OF TRADE.**—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price and normal value, if the difference in level of trade—

(A) involves the performance of different selling activities, and

(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(7) **ADJUSTMENTS TO CONSTRUCTED VALUE.**—Constructed value as determined under subsection (d) may be adjusted, as appropriate, pursuant to this subsection.

(b) **SALES AT LESS THAN COST OF PRODUCTION.**—

(1) **DETERMINATION; SALES DISREGARDED.**—Whenever the administering authority has reasonable grounds to believe or suspect that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the foreign like vessel, the administering authority shall determine whether, in fact, such sale was made at less than the cost of production. If the administering authority determines that the sale was made at less than the cost of production and was not at a price which permits recovery of all costs within 5 years, such sale may be disregarded in the determination of normal value. Whenever such a sale is disregarded, normal value shall be

based on another sale of a foreign like vessel in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the subject vessel.

(2) *DEFINITIONS AND SPECIAL RULES.*—For purposes of this subsection:

(A) *REASONABLE GROUNDS TO BELIEVE OR SUSPECT.*—

There are reasonable grounds to believe or suspect that the sale of a foreign like vessel was made at a price that is less than the cost of production of the vessel, if an interested party described in subparagraph (C), (D), (E), or (F) of section 861(17) provides information, based upon observed prices or constructed prices or costs, that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the vessel.

(B) *RECOVERY OF COSTS.*—If the price is below the cost of production at the time of sale but is above the weighted average cost of production for the period of investigation, such price shall be considered to provide for recovery of costs within 5 years.

(3) *CALCULATION OF COST OF PRODUCTION.*—For purposes of this section, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like vessel, during a period which would ordinarily permit the production of that vessel in the ordinary course of business, and

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to the production and sale of the foreign like vessel by the producer in question.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like vessel sold in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or on their disposition which are remitted or refunded upon exportation.

(c) *NONMARKET ECONOMY COUNTRIES.*—

(1) *IN GENERAL.*—If—

(A) the subject vessel is produced in a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the normal value of the subject vessel to be determined under subsection (a),

the administering authority shall determine the normal value of the subject vessel on the basis of the value of the factors of production utilized in producing the vessel and to which shall be added an amount for general expenses and profit plus the cost of expenses incidental to placing the vessel in a condition for delivery to the buyer. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a

market economy country or countries considered to be appropriate by the administering authority.

(2) *EXCEPTION.*—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of the subject vessel under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which a vessel that is—

(A) comparable to the subject vessel, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.

(3) *FACTORS OF PRODUCTION.*—For purposes of paragraph (1), the factors of production utilized in producing the vessel include, but are not limited to—

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) *VALUATION OF FACTORS OF PRODUCTION.*—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

(A) at a level of economic development comparable to that of the nonmarket economy country, and

(B) significant producers of comparable vessels.

(d) *SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.*—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) the subject vessel was produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of a foreign like vessel which are located in another country or countries,

(2) subsection (a)(1)(C) applies, and

(3) the normal value of a foreign like vessel produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like vessel produced in the facilities located in the exporting country,

the administering authority shall determine the normal value of the subject vessel by reference to the normal value at which a foreign like vessel is sold from one or more facilities outside the exporting country. The administering authority, in making any determination under this subsection, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of the foreign like vessel produced in facilities outside the exporting country and costs of production of the foreign like vessel produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction.

(e) *CONSTRUCTED VALUE.*—

(1) *IN GENERAL.*—For purposes of this title, the constructed value of a subject vessel shall be an amount equal to the sum of—

(A) the cost of materials and fabrication or other processing of any kind employed in producing the subject vessel, during a period which would ordinarily permit the production of the vessel in the ordinary course of business, and

(B)(i) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market of the country of origin of the subject vessel, or

(ii) if actual data are not available with respect to the amounts described in clause (i), then—

(I) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of the same general category of vessel in the domestic market of the country of origin of the subject vessel,

(II) the weighted average of the actual amounts incurred and realized by producers in the country of origin of the subject vessel (other than the producer of the subject vessel) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market, or

(III) if data is not available under subclause (I) or (II), the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by foreign producers (other than the producer of the subject vessel) in connection with the sale of vessels in the same general category of vessel as the subject vessel in the domestic market of the country of origin of the subject vessel.

The profit shall, for purposes of this paragraph, be based on the average profit realized over a reasonable period of time before and after the sale of the subject vessel and shall reflect a reasonable profit at the time of such sale. For purposes of the preceding sentence, a “reasonable period of time” shall not, except where otherwise appropriate, exceed 6 months before, or 6 months after, the sale of the subject vessel. In calculating profit under this paragraph, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

(2) COSTS AND PROFITS BASED ON OTHER REASONABLE METHODS.—When costs and profits are determined under paragraph (1)(B)(ii)(III), such determination shall, except where otherwise appropriate, be based on appropriate export sales by the producer of the subject vessel or, absent such sales, to export sales by other producers of a foreign like vessel or the same general category of vessel as the subject vessel in the country of origin of the subject vessel.

(3) *COSTS OF MATERIALS.*—For purposes of paragraph (1)(A), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject vessel produced from such materials.

(f) *SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.*—For purposes of subsections (b) and (e)—

(1) *COSTS.*—

(A) *IN GENERAL.*—Costs shall normally be calculated based on the records of the foreign producer of the subject vessel, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the vessel. The administering authority shall consider all available evidence on proper allocation of costs, including that which is made available by the foreign producer on a timely basis, if such allocations have been historically used by the foreign producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(B) *NONRECURRING COSTS.*—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) *STARTUP COSTS.*—

(i) *IN GENERAL.*—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation are affected by startup operations.

(ii) *STARTUP OPERATIONS.*—Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new type of vessel that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) *ADJUSTMENT FOR STARTUP OPERATIONS.*—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify

without delaying the timely completion of the investigation. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the vessel, the producer, or the industry is achieved.

(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time of sale.

(2) TRANSACTIONS DISREGARDED.—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of a like vessel in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) MAJOR INPUT RULE.—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the subject vessel, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

SEC. 823. CURRENCY CONVERSION.

(a) IN GENERAL.—In an injurious pricing proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the exchange rate specified with respect to such foreign currency in the forward sale agreement shall be used to convert the foreign currency.

(b) DATE OF SALE.—For purposes of this section, “date of sale” means the date of the contract of sale or, where appropriate, the date on which the material terms of sale are otherwise established. If the material terms of sale are significantly changed after such date, the date of sale is the date of such change. In the case of such a change in the date of sale, the administering authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin due only to fluctuations in the exchange rate between the original date of sale and the new date of sale.

Subtitle C—Procedures

SEC. 841. HEARINGS.

(a) *UPON REQUEST.*—The administering authority and the Commission shall each hold a hearing in the course of an investigation under this title, upon the request of any party to the investigation, before making a final determination under section 805.

(b) *PROCEDURES.*—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.

(a) *IN GENERAL.*—If—

- (1) necessary information is not available on the record, or
- (2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this title,

(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

(C) significantly impedes a proceeding under this title, or

(D) provides such information but the information cannot be verified as provided in section 844(g),
the administering authority and the Commission shall, subject to section 844(c), use the facts otherwise available in reaching the applicable determination under this title.

(b) *ADVERSE INFERENCES.*—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

- (1) the petition, or
- (2) any other information placed on the record.

(c) *CORROBORATION OF SECONDARY INFORMATION.*—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

SEC. 843. ACCESS TO INFORMATION.

(a) *INFORMATION GENERALLY MADE AVAILABLE.*—

(1) *PROGRESS OF INVESTIGATION REPORTS.*—The administering authority and the Commission shall, from time to time

upon request, inform the parties to an investigation under this title of the progress of that investigation.

(2) *EX PARTE MEETINGS.*—The administering authority and the Commission shall maintain a record of any *ex parte* meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding under this title, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding, if information relating to that proceeding was presented or discussed at such meeting. The record of such an *ex parte* meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the *ex parte* meeting shall be included in the record of the proceeding.

(3) *SUMMARIES; NON-PROPRIETARY SUBMISSIONS.*—The administering authority and the Commission shall disclose—

(A) any proprietary information received in the course of a proceeding under this title if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(4) *MAINTENANCE OF PUBLIC RECORD.*—The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.

(b) *PROPRIETARY INFORMATION.*—

(1) *PROPRIETARY STATUS MAINTAINED.*—

(A) *IN GENERAL.*—Except as provided in subsection (a)(4) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any other proceeding under this title covering the same subject vessel, or

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

(B) *ADDITIONAL REQUIREMENTS.*—The administering authority and the Commission shall require that information

for which proprietary treatment is requested be accompanied by—

(i) either—

(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention, and

(ii) either—

(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) *UNWARRANTED DESIGNATION.*—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(c) *LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.*—

(1) *DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.*—

(A) *IN GENERAL.*—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject ves-

sel) obtained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted, or

(ii) if—

(I) the person submitting the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date, and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and shall not consider either.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority or the Commission denies a request for information

under paragraph (1), then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission, as the case may be, to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order, except that a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

(1) *IN GENERAL.*—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) *CONTENTS OF NOTICE OR DETERMINATION.*—The notice or determination published under paragraph (1) shall include, to the extent applicable—

(A) in the case of a determination of the administering authority—

(i) the names of the foreign producer and the country of origin of the subject vessel,

(ii) a description sufficient to identify the subject vessel,

(iii) with respect to an injurious pricing charge, the injurious pricing margin established and a full explanation of the methodology used in establishing such margin,

(iv) with respect to countermeasures, the scope and duration of countermeasures and, if applicable, any changes thereto, and

(v) the primary reasons for the determination, and

(B) in the case of a determination of the Commission—

(i) considerations relevant to the determination of injury, and

(ii) the primary reasons for the determination.

(3) *ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.*—In addition to the requirements set forth in paragraph (2)—

(A) the administering authority shall include in a final determination under section 805 or 807(c) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation, concerning the establishment of the injurious pricing charge with respect to which the determination is made, and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation concerning the effects and impact on the industry of the sale of the subject vessel.

SEC. 844. CONDUCT OF INVESTIGATIONS.

(a) *CERTIFICATION OF SUBMISSIONS.*—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(b) *DIFFICULTIES IN MEETING REQUIREMENTS.*—

(1) *NOTIFICATION BY INTERESTED PARTY.*—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) *ASSISTANCE TO INTERESTED PARTIES.*—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(c) *DEFICIENT SUBMISSIONS.*—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (d), disregard all or part of the original and subsequent responses.

(d) *USE OF CERTAIN INFORMATION.*—In reaching a determination under section 803, 805, or 807, the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) *the information can be used without undue difficulties.*

(e) **NONACCEPTANCE OF SUBMISSIONS.**—*If the administering authority or the Commission declines to accept into the record any information submitted in an investigation under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.*

(f) **PUBLIC COMMENT ON INFORMATION.**—*Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 805 or 807, shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.*

(g) **VERIFICATION.**—*The administering authority shall verify all information relied upon in making a final determination under section 805.*

SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIPBUILDING AGREEMENT PANEL REPORTS.

(a) **ACTION BY UNITED STATES INTERNATIONAL TRADE COMMISSION.**—

(1) **ADVISORY REPORT.**—*If a dispute settlement panel under the Shipbuilding Agreement finds in a report that an action by the Commission in connection with a particular proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement, the Trade Representative may request the Commission to issue an advisory report on whether this title permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel concerning those obligations. The Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such request.*

(2) **TIME LIMITS FOR REPORT.**—*The Commission shall transmit its report under paragraph (1) to the Trade Representative within 30 calendar days after the Trade Representative requests the report.*

(3) **CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.**—*If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.*

(4) **COMMISSION DETERMINATION.**—*Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in*

paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar days after the request from the Trade Representative is made.

(5) *CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.*—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission's determination under paragraph (4) is implemented.

(6) *REVOCATION OF ORDER.*—If, by virtue of the Commission's determination under paragraph (4), an injurious pricing order is no longer supported by an affirmative Commission determination under this title, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the injurious pricing order.

(b) *ACTION BY ADMINISTERING AUTHORITY.*—

(1) *CONSULTATIONS WITH ADMINISTERING AUTHORITY AND CONGRESSIONAL COMMITTEES.*—Promptly after a report or other determination by a dispute settlement panel under the Shipbuilding Agreement is issued that contains findings that—

(A) an action by the administering authority in a proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement,

(B) the due date for payment of an injurious pricing charge contained in an order issued under section 806 should be amended,

(C) countermeasures provided for in an order issued under section 807 should be provisionally suspended or reduced pending the final decision of the panel, or

(D) the scope or duration of countermeasures imposed under section 807 should be narrowed or shortened,

the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) on the matter.

(2) *DETERMINATION BY ADMINISTERING AUTHORITY.*—Notwithstanding any other provision of this title, the administering authority shall, in response to a written request from the Trade Representative, issue a determination, or an amendment to or suspension of an injurious pricing or countermeasure order, as the case may be, in connection with the particular proceeding that would render the administering authority's action described in paragraph (1) not inconsistent with the findings of the panel.

(3) *TIME LIMITS FOR DETERMINATIONS.*—The administering authority shall issue its determination, amendment, or suspension under paragraph (2)—

(A) with respect to a matter described in subparagraph (A) of paragraph (1), within 180 calendar days after the request from the Trade Representative is made, and

(B) with respect to a matter described in subparagraph (B), (C), or (D) of paragraph (1), within 15 calendar days after the request from the Trade Representative is made.

(4) *CONSULTATIONS BEFORE IMPLEMENTATION.*—Before the administering authority implements any determination, amendment, or suspension under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) with respect to such determination, amendment, or suspension.

(5) *IMPLEMENTATION OF DETERMINATION.*—The Trade Representative may, after consulting with the administering authority and the congressional committees under paragraph (4), direct the administering authority to implement, in whole or in part, the determination, amendment, or suspension made under paragraph (2).

(6) *IMPLEMENTATION OF DETERMINATION; NOTICE OF IMPLEMENTATION.*—The administering authority shall implement the determination, amendment, or suspension under paragraph (2)—

(A) with respect to a matter described in subparagraph (A) of paragraph (1), only if the injurious pricing margin determined under paragraph (2) differs from the injurious pricing margin in the determination reviewed by the panel, and

(B) with respect to a matter described in subparagraph (B), (C), or (D) of paragraph (1), upon issuance of the determination, amendment, or suspension under paragraph (2).

The administering authority shall publish notice of such implementation in the Federal Register.

(c) *OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.*—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

Subtitle D—Definitions

SEC. 861. DEFINITIONS.

For purposes of this title:

(1) *ADMINISTERING AUTHORITY.*—The term “administering authority” means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(2) *COMMISSION.*—The term “Commission” means the United States International Trade Commission.

(3) *COUNTRY.*—The term “country” means a foreign country, a political subdivision, dependent territory, or possession of a foreign country and, except as provided in paragraph (16)(E)(iii), may not include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) *INDUSTRY.*—

(A) *IN GENERAL.*—Except as used in section 808, the term “industry” means the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a domestic like vessel.

(B) *PRODUCER.*—A “producer” of a domestic like vessel includes an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel.

(C) *CAPABILITY TO PRODUCE A DOMESTIC LIKE VESSEL.*—A producer has the “capability to produce a domestic like vessel” if it is capable of producing a domestic like vessel with its present facilities or could adapt its facilities in a timely manner to produce a domestic like vessel.

(D) *RELATED PARTIES.*—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a domestic producer and the foreign producer, seller, or United States buyer shall be considered to be related parties, if—

(I) the domestic producer directly or indirectly controls the foreign producer, seller or United States buyer,

(II) the foreign producer, seller, or United States buyer directly or indirectly controls the domestic producer,

(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

(IV) the domestic producer and the foreign producer, seller, or United States buyer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

(E) *PRODUCT LINES.*—In an investigation under this title, the effect of the sale of the subject vessel shall be assessed in relation to the United States production (or production capability) of a domestic like vessel if available data permit the separate identification of production (or production capability) in terms of such criteria as the production process or the producer’s profits. If the domestic production (or production capability) of a domestic like vessel has no separate identity in terms of such criteria, then the effect of the sale shall be assessed by the examination of the production (or production capability) of the narrowest group or range of

vessels, which includes a domestic like vessel, for which the necessary information can be provided.

(5) *BUYER*.—The term “buyer” means any person who acquires an ownership interest in a vessel, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, including an individual or company which owns or controls a buyer. There may be more than one buyer of any one vessel.

(6) *UNITED STATES BUYER*.—The term “United States buyer” means a buyer that is any of the following:

(A) A United States citizen.

(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

(C) A juridical entity that is owned or controlled by nationals or entities described in subparagraphs (A) and (B). For the purposes of this subparagraph—

(i) the term “own” means having more than a 50 percent interest, and

(ii) the term “control” means the actual ability to have substantial influence on corporate behavior, and control is presumed to exist where there is at least a 25 percent interest.

If ownership of a company is established under clause (i), other control is presumed not to exist unless it is otherwise established.

(7) *OWNERSHIP INTEREST*.—An “ownership interest” in a vessel includes any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the administering authority shall consider—

(A) the terms and circumstances of the transaction which conveys the interest,

(B) commercial practice,

(C) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries, and

(D) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of and the risk for the operation of the vessel for a significant part of the life-time of the vessel.

(8) *VESSEL*.—

(A) *IN GENERAL*.—Except as otherwise specifically provided under international agreements, the term “vessel” means—

(i) a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or

for performance of a specialized service (including, but not limited to, ice breakers and dredgers), and

(ii) a tug of 365 kilowatts or more, that is produced in a Shipbuilding Agreement Party or a country that is not a Shipbuilding Agreement Party and not a WTO member.

(B) *EXCLUSIONS.*—The term “vessel” does not include—

(i) any fishing vessel destined for the fishing fleet of the country in which the vessel is built,

(ii) any military vessel,

(iii) a military reserve vessel, and

(iv) any vessel sold before the date that the Shipbuilding Agreement enters into force with respect to the United States, except that any vessel sold after December 21, 1994, for delivery more than 5 years after the date of the contract of sale shall be a “vessel” for purposes of this title unless the shipbuilder demonstrates to the administering authority that the extended delivery date was for normal commercial reasons and not to avoid applicability of this title.

(C) *SELF-PROPELLED SEAGOING VESSEL.*—A vessel is “self-propelled seagoing” if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

(D) *MILITARY VESSEL.*—A “military vessel” is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes.

(E) *MILITARY RESERVE VESSEL.*—A “military reserve vessel” is a vessel that has been constructed with national defense features and characteristics required by the Secretary of Defense for the purpose of supporting the United States Armed Forces in a contingency.

(9) *LIKE VESSEL.*—The term “like vessel” means a vessel of the same type, same purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel.

(10) *DOMESTIC LIKE VESSEL.*—The term “domestic like vessel” means a like vessel produced in the United States.

(11) *FOREIGN LIKE VESSEL.*—Except as used in section 822(e)(1)(B)(ii)(II), the term “foreign like vessel” means a like vessel produced by the foreign producer of the subject vessel for sale in the producer’s domestic market or in a third country.

(12) *SAME GENERAL CATEGORY OF VESSEL.*—The term “same general category of vessel” means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

(13) *SUBJECT VESSEL.*—The term “subject vessel” means a vessel subject to investigation under section 801, 808, or 809.

(14) *FOREIGN PRODUCER.*—The term “foreign producer” means the producer or producers of the subject vessel.

(15) *EXPORTING COUNTRY.*—The term “exporting country” means the country in which the subject vessel was built.

(16) *MATERIAL INJURY.*—

(A) *IN GENERAL.*—The term “material injury” means harm which is not inconsequential, immaterial, or unimportant.

(B) *SALE AND CONSEQUENT IMPACT.*—In making determinations under sections 803(a) and 805(b), the Commission in each case—

(i) shall consider—

(I) the sale of the subject vessel,

(II) the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and

(III) the impact of the sale of the subject vessel on domestic producers of the domestic like vessel, but only in the context of production operations within the United States, and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

In the notification required under section 805(d), the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) *EVALUATION OF RELEVANT FACTORS.*—For purposes of subparagraph (B)—

(i) *SALE OF THE SUBJECT VESSEL.*—In evaluating the sale of the subject vessel, the Commission shall consider whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

(ii) *PRICE.*—In evaluating the effect of the sale of the subject vessel on prices, the Commission shall consider whether—

(I) there has been significant price underselling of the subject vessel as compared with the price of a domestic like vessel, and

(II) the effect of the sale of the subject vessel otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

(iii) *IMPACT ON AFFECTED DOMESTIC INDUSTRY.*—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, including with regard to sales,

(III) *actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment,*

(IV) *actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and*

(V) *the magnitude of the injurious pricing margin.*

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(D) *STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.*

(E) *THREAT OF MATERIAL INJURY.—*

(i) *IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of the sale of the subject vessel, the Commission shall consider, among other relevant economic factors—*

(I) *any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to United States buyers, taking into account the availability of other export markets to absorb any additional exports,*

(II) *whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to United States buyers,*

(III) *whether sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales,*

(IV) *the potential for product-shifting if production facilities in the exporting country, which can presently be used to produce a foreign like vessel or could be adapted in a timely manner to produce a foreign like vessel, are currently being used to produce other types of vessels,*

(V) *the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and*

(VI) *any other demonstrable adverse trends that indicate the probability that there is likely to be*

material injury by reason of the sale of the subject vessel.

(ii) *BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.*

(iii) *EFFECT OF INJURIOUS PRICING IN THIRD-COUNTRY MARKETS.—*

(I) *IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.*

(II) *EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities as a whole shall be treated as a single foreign country.*

(F) *CUMULATION FOR DETERMINING MATERIAL INJURY.—*

(i) *IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii) of this subparagraph, the Commission shall cumulatively assess the effects of sales of foreign like vessels from all foreign producers with respect to which—*

(I) *petitions were filed under section 802(b) on the same day,*

(II) *investigations were initiated under section 802(a) on the same day, or*

(III) *petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,*

if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

(ii) *EXCEPTIONS.—The Commission shall not cumulatively assess the effects of sales under clause (i)—*

(I) *with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those sales before the Commission's final determination is made, or*

(II) *from any producer with respect to which the investigation has been terminated.*

(iii) *RECORDS IN FINAL INVESTIGATIONS.*—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(G) *CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.*—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

(i) petitions were filed under section 802(b) on the same day,

(ii) investigations were initiated under section 802(a) on the same day, or

(iii) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

(17) *INTERESTED PARTY.*—The term “interested party” means, in a proceeding under this title—

(A)(i) the foreign producer, seller (other than the foreign producer), and the United States buyer of the subject vessel, or

(ii) a trade or business association a majority of the members of which are the foreign producer, seller, or United States buyer of the subject vessel,

(B) the government of the country in which the subject vessel is produced or manufactured,

(C) a producer that is a member of an industry,

(D) a certified union or recognized union or group of workers which is representative of an industry,

(E) a trade or business association a majority of whose members are producers in an industry,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

(G) for purposes of section 807, a purchaser who, after the effective date of an order issued under that section, entered into a contract of sale with the foreign producer that is subject to the order.

(18) *AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.*—If the Commissioners voting on a determination by the

Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is or has been—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(19) ORDINARY COURSE OF TRADE.—The term “ordinary course of trade” means the conditions and practices which, for a reasonable time before the sale of the subject vessel, have been normal in the shipbuilding industry with respect to a like vessel. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 822(b)(1).

(B) Transactions disregarded under section 822(f)(2).

(20) NONMARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—The term “nonmarket economy country” means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of vessels in such country do not reflect the fair value of the vessels.

(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) DETERMINATION IN EFFECT.—

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) *DETERMINATIONS NOT IN ISSUE.*—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle A.

(21) *SHIPBUILDING AGREEMENT.*—The term “Shipbuilding Agreement” means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

(22) *SHIPBUILDING AGREEMENT PARTY.*—The term “Shipbuilding Agreement Party” means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

(23) *WTO AGREEMENT.*—The term “WTO Agreement” means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

(24) *WTO MEMBER.*—The term “WTO member” means a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(25) *TRADE REPRESENTATIVE.*—The term “Trade Representative” means the United States Trade Representative.

(26) *AFFILIATED PERSONS.*—The following persons shall be considered to be “affiliated” or “affiliated persons”:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person, and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(27) *INJURIOUS PRICING.*—The term “injurious pricing” refers to the sale of a vessel at less than fair value.

(28) *INJURIOUS PRICING MARGIN.*—

(A) *IN GENERAL.*—The term “injurious pricing margin” means the amount by which the normal value exceeds the export price of the subject vessel.

(B) *MAGNITUDE OF THE INJURIOUS PRICING MARGIN.*—The magnitude of the injurious pricing margin used by the Commission shall be—

(i) in making a preliminary determination under section 803(a) in an investigation (including any investigation in which the Commission cumulatively assesses the effect of sales under paragraph (16)(F)(i)), the injurious pricing margin or margins published by the administering authority in its notice of initiation of the investigation; and

(ii) in making a final determination under section 805(b), the injurious pricing margin or margins most recently published by the administering authority before the closing of the Commission's administrative record.

(29) *COMMERCIAL INTEREST REFERENCE RATE.*—The term “Commercial Interest Reference Rate” or “CIRR” means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organization for Economic Cooperation, and entered into on December 21, 1994.

(30) *ANTIDUMPING.*—

(A) *WTO MEMBERS.*—In the case of a WTO member, the term “antidumping” refers to action taken pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

(B) *OTHER CASES.*—In the case of any country that is not a WTO member, the term “antidumping” refers to action taken by the country against the sale of a vessel at less than fair value that is comparable to action described in subparagraph (A).

(31) *BROAD MULTIPLE BID.*—The term “broad multiple bid” means a bid in which the proposed buyer extends an invitation to at least all the producers in the industry known by the buyer to be capable of building the subject vessel.

* * * * *

TITLE 28, UNITED STATES CODE

PART IV—JURISDICTION AND VENUE

* * * * *

CHAPTER 95—COURT OF INTERNATIONAL TRADE

* * * * *

§1581. Civil actions against the United States and agencies and officers thereof

(a) * * *

* * * * *

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A or 516B of the Tariff Act of 1930.

* * * * *

PART VI—PARTICULAR PROCEEDINGS

* * * * *

CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

* * * * *

§2643. Relief

(a) * * *

* * * * *

(c)(1) Except as provided in paragraphs (2), (3), (4), [and (5)] (5), and (6) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

* * * * *

(6) In any civil action under section 516B of the Tariff Act of 1930, the Court of International Trade may not issue injunctions or any other form of equitable relief, except with regard to implementation of a countermeasure order under section 468 of that Act, upon a proper showing that such relief is warranted.

* * * * *

MERCHANT MARINE ACT, 1936

* * * * *

TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

* * * * *

SEC. 511. (a) When used in this section the term “new vessel” means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or, *if the vessel is a Shipbuilding Agreement vessel, constructed in a Shipbuilding Agreement Party, but only with regard to moneys deposited, on or after the date on which the Shipbuilding Trade Agreement Act takes effect, into a construction reserve fund established under subsection (b) or the construction of which has been financed under title V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross*

tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

* * * * *

TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY

SEC. 601. (a) The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the term “essential service” means the operation of a vessel on a service, route, or line described in section 211(a) or in bulk cargo carrying service described in section 211(b). No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title[, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date] *and that such vessel or vessels were built in the United States, or, if the vessel or vessels are Shipbuilding Agreement vessels, in a Shipbuilding Agreement Party*; (2) the applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 613 of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

* * * * *

SEC. 606. Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If

any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act, he may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved, the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service, upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential services, and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner; and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico or, *if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party or in the United States*, except in an emergency.

SEC. 607. (a) Agreement Rules.

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this sec-

tion to establish a capital construction fund (hereinafter in this section referred to as the “fund”) with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States or, *if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party*, and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person’s taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

* * * * *

(k) Definitions.

For purposes of this section—

(1) The term “eligible vessel” means any vessel—

[(A) constructed in the United States and, if reconstructed, reconstructed in the United States,]

(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,

* * * * *

(2) The term “qualified vessel” means any vessel—

[(A) constructed in the United States and, if reconstructed, reconstructed in the United States,]

(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States, but only with regard to monies deposited into the fund on or after the date on which the Shipbuilding Trade Agreement Act takes effect,

* * * * *

SEC. 610. An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, **[shall**

be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,] *shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party*, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after the passage of this Act it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

* * * * *

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. (a) * * *

(b)(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical areas: *Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: *And provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. [For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States, for a period of three years: *Provided, however*, That the provisions of this amendment shall not apply where, (1) prior to the enactment of

this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.】 *For purposes of this section, the term “privately owned United States-flag commercial vessels” shall be deemed to include—*

(A) any privately owned United States-flag commercial vessel constructed in the United States, and if rebuilt, rebuilt in the United States or in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and

(B) any privately owned vessel constructed in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and if rebuilt, rebuilt in a Shipbuilding Agreement Party or in the United States, that is documented pursuant to chapter 121 of title 46, United States Code.

The term “privately owned United States-flag commercial vessels” shall also be deemed to include any cargo vessel that so qualified pursuant to section 615 of this Act or this paragraph before the date on which the Shipbuilding Trade Agreement Act takes effect. The term “privately owned United States-flag commercial vessels” shall not be deemed to include any liquid bulk cargo vessel that does not meet the requirements of section 3703a of title 46, United States Code.

* * * * *

SEC. 905. When used in this Act—

(a) * * *

* * * * *

(h) The term “Shipbuilding Agreement” means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

(i) The term “Shipbuilding Agreement Party” means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

(j) The term “Shipbuilding Agreement vessel” means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

(k) The term “Export Credit Understanding” means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

(l) The term “Export Credit Understanding vessel” means a vessel to which the Secretary determines the Export Credit Understanding applies.

* * * * *

TITLE XI—FEDERAL SHIP MORTGAGE INSURANCE

* * * * *

SEC. 1104A. (a) * * *

(b) Obligations guaranteed under this title—

(1) * * *

* * * * *

[(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;]

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percent per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary, except that, with respect to Export Credit Understanding vessels, and Shipbuilding Agreement vessels, the obligations shall bear interest at a rate the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be;

* * * * *

[(i) The Secretary may not, with respect to—

[(1) the general 75 percent or less limitation in subsection (b)(2);

[(2) the 87½ percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or section 1112(b); or

[(3) the 80 percent or less limitation in the 3rd proviso to such subsection;

establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.]

(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

(A) the general 75 percent or less limitation contained in subsection (b)(2),

(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1112(b), or

(C) the 80 percent or less limitation in the 3rd proviso to such subsection,

establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(2) With respect to *Export Credit Understanding* vessels and *Shipbuilding Agreement* vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the *Export Credit Understanding* or the *Shipbuilding Agreement*, as the case may be.

* * * * *

SEC. 1104B. (a) * * *

(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87½ percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

The Secretary may not by rule, regulation, or procedure establish any percentage within the 87½ percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section[.], except that, with respect to *Export Credit Understanding* vessels and *Shipbuilding Agreement* vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the *Export Credit Understanding* or the *Shipbuilding Agreement*, as the case may be.

* * * * *

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

* * * * *

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart A—Nonresident Alien Individuals

* * * * *

SEC. 872. GROSS INCOME

(a) * * *

(b) EXCLUSIONS.—The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) SHIPS OPERATED BY CERTAIN NONRESIDENTS.—[Gross income] *Except as provided in section 883(d), gross income* derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

* * * * *

Subpart B—Foreign Corporations

* * * * *

SEC. 883. EXCLUSIONS FROM GROSS INCOME

(a) INCOME OF FOREIGN CORPORATIONS FROM SHIPS AND AIRCRAFT.—The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) SHIPS OPERATED BY CERTAIN FOREIGN CORPORATIONS.—[Gross income] *Except as provided in subsection (d), gross income* derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

* * * * *

(d) PENALTIES FOR FAILURE TO DISCLOSE POSITION THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT INCLUDIBLE IN GROSS INCOME.—

(1) IN GENERAL.—A taxpayer who, with respect to any tax imposed by this title, takes the position that any of its gross income derived from the international operation of a ship or ships is not includible in gross income by reason of subsection (a)(1) or section 872(b)(1) shall be entitled to such treatment only if such position is disclosed (in such manner as the Secretary may prescribe) on the return of tax for such tax (or any statement attached to such return).

(2) ADDITIONAL PENALTIES FOR FAILING TO DISCLOSE POSITION.—If a taxpayer fails to meet the requirement of paragraph (1) with respect to any taxable year—

(A) the amount of the income from the international operation of a ship or ships—

(i) which is from sources without the United States, and

(ii) which is attributable to a fixed place of business in the United States, shall be treated for purposes of this title as effectively connected with the conduct of a trade or business within the United States, and

(B) no deductions or credits shall be allowed which are attributable to income from the international operation of a ship or ships.

(3) REASONABLE CAUSE EXCEPTION.—This subsection shall not apply to a failure to disclose a position if it is shown that such failure is due to reasonable cause and not due to willful neglect.

* * * * *

DISSENTING VIEWS OF HON. TILLIE FOWLER

After carefully reviewing the terms of the OECD Agreement as negotiated, I have reached the conclusion that while it is not perfect, it is deserving of support.

During the course of National Security Committee hearings that touched on aspects of the Agreement, a number of issues were brought up which raised questions for me. These included issues related to the date of the Agreement's entry into force, the final date for delivery of vessels for which subsidy commitments were made prior to entry into force, continuing transitional subsidies for certain foreign nations, the implications for the Jones Act, the application of the Agreement to vessels built for military materiel prepositioning programs, and the application of the Agreement to the "national defense features" program.

Others on the committee were clearly troubled by similar concerns. During the course of the committee's mark-up, several modifications were proposed to the version of the implementing legislation referred to the National Security Committee.

I found myself in agreement with several of these modifications. Those clarifying that the Jones Act would not be affected by the bill and that vessels built for military materiel prepositioning programs would not fall under the Agreement, were, in my judgment, eminently sound and meritorious of support. I commend Rep. Bateman, the Chairman of the National Security Committee's Merchant Marine Panel, for his attention to these issues through his inclusion of them in his substitute amendment.

However, other elements of the substitute amendment were troubling to me. First, the substitute contains a unilateral extension of the current 25-year terms provided pursuant to the Title XI Loan Guarantee Program for an additional 30 months beyond the targeted date of entry of force of the Agreement. The substitute would similarly extend the deadline date for delivery of ships for which subsidy commitments were made prior to entry into force. These provisions are not consistent with the terms of the Agreement, which require that government programs used to finance ship purchases be conformed to a new international standard of 12-year financing, and require that all ships for which subsidy commitments were made prior to entry into force be delivered no later than December 31, 1998. While I would support extending this delivery date to make it consistent with a three-year period from the date of entry into force, I cannot support a unilateral thirty-month extension.

In addition, there is language in the Committee substitute relating to the exemption in the Agreement for military vessels and military features installed on otherwise commercial vessels. In my judgment it is not sufficiently clear whether this language would simply allow for the national defense features of a given vessel to

be exempt from the terms of the Agreement, which is consistent with the Agreement's provisions, or whether it would allow the entire vessel to be exempt from the Agreement, which would be a violation of the Agreement. In my judgment, this section needs clarification.

It is my concern that, if enacted, some of the substitute's provisions would signal to the other parties that the United States is not serious about the achievement of a new shipbuilding agreement. There is no evidence to suggest that unilateral U.S. action to continue 25-year financing arrangements under the Title XI program—while other nations would be prohibited from providing similar financing—would be acceptable to the other parties to the Agreement. Likewise, it is not credible to this Member that other parties to the Agreement would agree to an exclusively U.S. exemption from the Agreement for any vessel on which a military feature was installed. To the contrary, it appears to me that such unilateral efforts to significantly change the Agreement would cause the other parties to withdraw from the Agreement, thereby terminating the prospects for an international agreement on shipbuilding.

Finally, I would like to note for the record that neither the Agreement as negotiated nor the substitute amendment terminates the Title XI Loan Guarantee Program, as a number of Members suggested during the mark-up. Rather, the Agreement requires that the terms of the Title XI program be brought into compliance with a new international standard. The Agreement in no way affects the funding for the Title XI program; rather, it permits current or even increased levels of annual appropriations for the Title XI program indefinitely. Changes to the current terms of the Title XI program required by the Agreement would revert back to original law should the Agreement no longer have force and effect with respect to the U.S. In short, any future decision by the United States to withdraw from the Agreement would reinstate the current terms of the Title XI program.

TILLIE K. FOWLER.

